CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
RESPONSE TO CONSOLIDATED PETITIONS
SWRCB/OCC FILES A-2751(a) & A-2751(b)

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I. INTRODUCTION

On April 15, 2021, the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board, CCWB, or Regional Board) adopted Order No. R3-2021-0040, General Waste Discharge Requirements for Discharges from Irrigated Lands (General Order) and Resolution No. R3-2021-0039, Certification of Environmental Impact Report for General Waste Discharge Requirements for Discharges from Irrigated Lands. Original documents cited throughout this Response to Consolidated Petitions may refer to the General Order as "Agricultural Order 4.0" or "Ag. Order 4.0."

Following the Central Coast Water Board's adoption of the General Order and resolution, the State Water Resources Control Board (State Water Board) received petitions from the following:

(1) Grower-Shipper Association of Central California, Grower Shipper Association of Santa Barbara and San Luis Obispo Counties, Wester Growers Association, Western Plant Health Association, California Strawberry Commission, 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 (collectively "agricultural petitioners"); and

(2) California Coastkeeper Alliance, Santa Barbara Channelkeeper, Monterey Coastkeeper, San Jerardo Cooperative, California Sportfishing Alliance, Pacific Coast Federation of Fishermen's Association, and the Institute for Fisheries Resources (collectively "environmental petitioners").

On July 30, 2021, the State Water Board informed the petitioners that it had consolidated the petitions and would begin its review of the petitions. The State Water Board invited the Central Coast Water Board and other interested persons to file a written response to the petitions.

The Central Coast Water Board submits this Response to Consolidated Petitions SWRCB/OCC Files A-2751(a) & A-2751(b) (Response to Consolidated Petitions). The Response to Consolidated Petitions is organized in the following sections: (II) Summary Response; (III) Background; (IV) Nonpoint Source Policy; (V) Responses to Contentions Concerning the General Order; (VI) Responses to Contentions Regarding Compliance with the California Environmental Quality Act; and (VII) Conclusion. Each contention raised in the petitions is identified, along with a citation to where that contention can be found in the respective petitions. In this Response to Consolidated Petitions, the petition submitted by the agricultural petitioners is referred to as "GS Petition" and the petition submitted by the environmental petitioners is referred to as "CCA Petition."

II. SUMMARY RESPONSE TO CONSOLIDATED PETITIONS

The Central Coast Water Board respectfully disagrees with the contentions raised in the petitions. The Central Coast Water Board complied with all applicable laws, regulations, and plans in adopting the General Order and in preparing and certifying the final Environmental Impact Report.

For all the reasons set forth in the responses to contentions below, the Central Coast Water Board respectfully requests that the State Water Board deny the agricultural petitioners' and environmental petitioners' requested relief to remove the contested provisions of the General Order and uphold the General Order and final Environmental Impact Report in their entirety.

III. BACKGROUND

A. Regulating Waste Discharges from Irrigated Agriculture in the Central Coast Region

The central coast region of California has an abundance of critical and highly valued water resources. For instance, the central coast region has more than 17,000 miles of streams and rivers and more than 4,000 square miles of groundwater basins that provide approximately 90% of the drinking water for hundreds of thousands of people.[1] The region also includes the Monterey Bay National Marine Sanctuary (the largest marine sanctuary in the United States) and Elkhorn Slough (one of the largest remaining tidal wetlands in the United States).[2] These resources provide habitat for many threatened and endangered species.

California's central coast region is also one of the most productive and profitable agricultural regions in the nation, contributing to more than 14 percent of California's agricultural economy.[3] Approximately 3,000 agricultural operations in the region produce many high value specialty crops on approximately 540,000 acres of irrigated land. Examples of high value crops include lettuce, strawberries, raspberries, artichokes, asparagus, broccoli, carrots, cauliflower, celery, fresh herbs, mushrooms, onions, peas, spinach, wine grapes, tree fruit, and nuts.[4] Oftentimes, multiple crops are grown on a rotational, cyclical basis, which results in productive yields but very little time when fields are fallow. With multiple cropping cycles per year, agricultural practices in the central coast region result in significant applications of irrigation water, nitrogen fertilizer, and pesticides.[5] Discharges of waste associated with irrigated agriculture are a

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[1] General Order, Attachment A, at p. 2, paragraph 8, AR0085.

[2] *Id.*, at p. 3, paragraph 11, AR0086.

[3] *Id.*, at p. 3, paragraph 13, AR0086.

[4] General Order, at p. 1, paragraph 1, AR0004.

[5] General Order, Attachment A, at p. 31, paragraph 106, AR0114.

major cause of documented water quality impairments.[6] Nearly all beneficial uses of water are affected, and many agricultural waste discharges contribute to already significantly impaired water quality and impose certain risks and significant costs to public health, drinking water supplies, aquatic life, and valued water resources. Discharges from irrigated lands have impaired and will continue to impair the quality of waters of the state within the central coast region if such discharges are not controlled.[7] The Central Coast Water Board is the principal state agency in the central coast region with the primary responsibility for the coordination and control of water quality.[8] As such, the Central Coast Water Board has regulated irrigated agriculture's discharges since the adoption of its first agricultural order in 2004. Data reported by entities enrolled in the Central Coast Water Board's agricultural orders document ongoing widespread and severe water quality degradation associated with irrigated agricultural activities. The previous agricultural orders have also generated data documenting excessive applications of fertilizer nitrogen relative to published crop needs for a significant subset of central coast ranches. Although the previous orders increased awareness of the extent and magnitude of pollutant loading and associated water quality problems caused by agricultural activities, they have not resulted in widespread improved water quality or beneficial use protection.[9] To ensure that the next iteration of the Central Coast Water Board's agricultural regulatory program results in tangible improvements in water quality in the region, Order No. R3-2021-0040, General Waste Discharge Requirements for Discharges from Irrigated Lands (General Order), takes a more meaningful and performance-based approach to regulating discharges from irrigated agriculture, as described in the next section.

B. General Order

The Central Coast Water Board adopted the General Order on April 15, 2021. The General Order replaces Order No. R3-2017-0002 (Agricultural Order 3.0, Ag. Order 3.0, or 2017 Agricultural Order). The General Order establishes waste discharge requirements and monitoring and reporting requirements pursuant to Water Code sections 13263 and 13267 to protect groundwater and surface water affected by irrigated agriculture waste discharges.

Beginning September 2018, the Regional Board spent nearly 17 full days of public meetings focused on developing the General Order. The Regional Board dedicated two days, April 14 and 15, 2021, to the consideration of whether to adopt the order. During the development of the General Order, the Central Coast Water Board released tables comprising conceptual regulatory requirement options for the General Order and three

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[6] *Id.*, at pp.1–2, paragraph 5, AR0084–AR0085; *id.*, at p. 60, paragraph 183, AR0143.

[7] *Id.*, at pp. 3–4, paragraph 14, AR0086–AR0087.

[8] Wat. Code § 13001; General Order, Attachment A, at p. 1, paragraph 4, AR0084.

[9] General Order, Attachment A, at pp. 1-2, paragraph 5, AR0084–AR0085.

drafts of the General Order.[10] The Central Coast Water Board held three comment periods on these documents, including one comment period that was extended twice to accommodate the COVID-19 pandemic.[11] During the process, the Central Coast Water Board received nearly 350 unique comment letters on the options tables, Draft Agricultural Order (DAO), and Revised Draft Agricultural Order (RAO), and heard oral comments from individual farming operations, agricultural industry organizations, technical assistance providers, residents in rural agricultural areas, environmental justice organizations, environmental organizations, state and local agencies, and unaffiliated members of the general public.

The General Order "regulates landowners and operators of commercial irrigated lands on or from which there are discharges of waste or activities that could affect the quality of any surface water or groundwater or result in the impairment of beneficial uses" or "Dischargers."[12] The foundation of the General Order is that Dischargers, also referred to as "growers," must not cause or contribute to exceedances of applicable water quality objectives; must protect all beneficial uses for inland surface waters, enclosed bays, and estuaries, and for groundwater, as specified in the Water Quality Control Plan for the Central Coastal Region (Basin Plan); and must prevent nuisance.[13] Dischargers must do so immediately "except in compliance with this Order."[14] The "except in" clause allows Dischargers to be in compliance with the General Order if they are achieving certain targets and limits pursuant to a time schedule. The General Order has three core components that specify water quality targets and limits and other requirements, as

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[10] The Central Coast Water Board provided notices of availability to comment on the conceptual regulatory requirement options on November 19, 2018; the Draft Agricultural Order (DAO) on February 21, 2020; and the Revised Draft Agricultural Order (RAO) on January 26, 2021. The Proposed Agricultural Order (PAO) was provided to the public in advance of the adoption hearing that began on April 14, 2021. Notice of Written Public Comment Period for Ag Order 4.0 Conceptual Regulatory Requirement Options, AR5028; Email from Chris Rose to technical assistance providers announcing Notice of Availability and Opportunity to Comment Draft Environmental Impact Report and Draft Agricultural Order 4.0, AR6216; Email from AgNOI to Dischargers announcing Notice of Availability and Opportunity to Comment Draft Environmental Impact Report and Draft Agricultural Order 4.0, AR6218; Email from AgNOI, CCWB, to enrolled Dischargers via bcc field announcing Notice of Availability and Opportunity to Comment on Revised Agricultural Order 4.0, AR10241; Email from Elaine Sahl, CCWB, to Irrigated Lands Program email list and Agricultural Order 4.0 CEQA email list announcing Notice of Availability and Opportunity to Comment on Revised Agricultural Order 4.0, AR10251; *see also* Notice of Availability and Opportunity to Comment Draft Environmental Impact Report and Draft Agricultural Order 4.0, AR6227; Notice of Availability and Opportunity to Comment Revised Draft Agricultural Order 4.0, AR10280.

[11] The comment period for the DAO was extended twice, to 122 days. Revised Notice of Availability and Opportunity to Comment Draft Environmental Impact Report and Draft Agricultural Order 4.0, AR6266; Revised Notice of Availability and Opportunity to Comment Draft Environmental Impact Report and Draft Agricultural Order 4.0, AR6279.

[12] General Order at p. 7, paragraph 34, AR0010; *see also* General Order, Attachment C, at p. 9, paragraph 34, AR0465.

[13] General Order, at p. 42, paragraph 1, AR0045.

[14] *Id.*

well as the compliance schedules associated with them: (1) Groundwater protection requirements for Dischargers not participating in a third-party program;[15] (2) Groundwater protection requirements for Dischargers participating in a third-party program;[16] and (3) Surface water protection requirements for all Dischargers (incorporating individual and third-party program options).[17] Certain education, planning, recordkeeping, and reporting requirements are built into these components as well as the overarching requirement for each Discharger to prepare a Farm Plan. The General Order also has an extensive set of water quality monitoring requirements.[18] These requirements are briefly described in the following paragraphs.

For groundwater protection, the General Order establishes numeric targets and limits for fertilizer nitrogen application and nitrogen discharge that become more stringent over time. Dischargers may choose to comply with the groundwater protection requirements on an individual basis or through membership in the Third-Party Alternative Compliance Pathway (3P-ACP) for groundwater protection that is discussed in greater detail in the responses to Contentions GS-1 and GS-2. Dischargers participating in the 3P-ACP are subject only to targets for nitrogen application and discharge and have more time than individual Dischargers to meet the targets. For the 3P-ACP, the third-party program administrator is tasked with developing groundwater protection values, formulas, and targets that act as collective nitrogen discharge targets for groups of Dischargers within groundwater protection areas, and a timeline for their implementation.

For surface water protection, the General Order establishes numeric receiving water limits for pesticides, nutrients, and turbidity/sediment as well as a prohibition on the disturbance of existing riparian vegetation. The timeline for achieving these limits varies based on whether the water body and constituent of concern is addressed by a TMDL. All Dischargers must meet surface receiving water limits and comply with the prohibition. The final surface receiving water limits and the deadline for achieving the limits are specified in the General Order, but the Dischargers, either individually or through a third-party program, prepare follow-up surface receiving water implementation work plans. The workplans specify measures such as outreach, education, and management practice implementation and assessment to be implemented to achieve applicable surface water numeric limits by applicable compliance dates and the interim quantifiable milestones necessary for progress toward achievement of the limits.

Additional requirements and prohibitions, in Part 2, Section D of the General Order, protect surface water and groundwater quality.

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[15] *Id.*, at pp. 21–30, AR0024–AR0033; *id.*, at pp. 52-53, Table C.1-2, Table C.1-3, AR0054–AR0055.

[16] *Id.*, at pp. 31–35, AR0034–AR0038; *id.*, at p.54, Table C.2-1, Table C.2-2, AR0057.

[17] *Id.*, at pp. 35–42, AR0038–AR0042; *id.*, at pp. 60-75, Tables C.3-2 to C.3-7, AR0063–AR0078.

[18] *See generally*, General Order, Attachment B, AR0382–AR0455.

The General Order distinguishes targets from limits in that the failure to meet targets are not permit violations that could lead to enforcement. Failure to meet targets leads to additional requirements such as participation in training, professional certification of the Irrigation and Nutrient Management Plan, or increased monitoring. In contrast, exceedances of limits after their compliance dates may subject a Discharger to the aforementioned consequences as well as enforcement action. The type of increased monitoring to which a Discharger may be subject depends on when the exceedance occurs, and whether the Discharger is a member of a third-party program.

The General Order also requires recordkeeping, monitoring, and reporting to measure and document progress and compliance with the General Order. Depending on the requirement, monitoring and reporting may be conducted individually or through an approved third-party program.

All Dischargers enrolled in the General Permit "must develop, implement, and update a Farm Water Quality Management Plan (Farm Plan) for each ranch. A current copy of the Farm Plan must be maintained by the Discharger and submitted to the Central Coast Water Board upon request."[19] The Farm Plan must contain the following:

- Irrigation and Nutrient Management Plan (INMP);
- Pesticide Management Plan (PMP);
- Sediment and Erosion Management Plan (SEMP);
- Water Quality Education; and
- CEQA Mitigation Measure Implementation.[20]

The Farm Plan is primarily a planning and recordkeeping tool used by Dischargers to manage their agricultural operations, but certain elements of the Farm Plan are reported to the Central Coast Water Board. All Dischargers must annually report management practice implementation and assessment for both groundwater and surface water protection, through the Annual Compliance Form (ACF).[21]

For groundwater protection, monitoring and reporting requirements include:

- Reporting of total nitrogen applied, total nitrogen removed, and irrigation water application and discharge volumes, through a Total Nitrogen Applied (TNA) report form or an Irrigation and Nutrient Management Plan (INMP) Summary report form as appropriate;
- Irrigation well monitoring and reporting, prior to the start of groundwater quality trend monitoring and reporting;

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[19] General Order, at p. 19, paragraph 1, AR0022.

[20] *Id.*

[21] *Id.*, at p. 19, paragraph 2, AR0022.

- On-farm domestic well monitoring and reporting for nitrate and 1,2,3-trichloropropane (1,2,3-TCP);
- Groundwater quality trend monitoring and reporting; and
- When directed by the Executive Officer, ranch-level groundwater discharge monitoring and reporting.[22]

Monitoring and reporting requirements related to surface water protection include:

- Surface receiving water monitoring and reporting, including a workplan that contains a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP);[23] and
- When directed by the Executive Officer, ranch-level surface discharge monitoring and reporting.[24]

The requirements to report management practice implementation through the ACF and to report total nitrogen applied, total nitrogen removed, and irrigation water application and discharge volumes, through a TNA report form or the INMP Summary report form apply to each individual Discharger, although the third-party may collect this data and submit it to the Regional Board. Water quality monitoring and reporting, including irrigation well monitoring, on-farm drinking water well monitoring, groundwater quality trend monitoring, and surface receiving water monitoring, may be conducted individually or through an approved third-party program. The General Order allows some of the monitoring and reporting requirements, as well as the surface receiving water implementation work plans discussed above, to be phased in based on Groundwater Phase Areas and Surface Water Priority Areas in which the Discharger is located.[25]

C. Environmental Impact Report

Immediately prior to adopting the General Order, the Central Coast Water Board adopted a resolution certifying the Environmental Impact Report for General Waste Discharge Requirements for Discharges from Irrigated Lands (EIR). Under the California Environmental Quality Act (CEQA), Public Resources Code sections 21000 through 21189, the Central Coast Water Board is the lead agency for the CEQA project, in this case the General Order. After conducting a preliminary analysis of the General Order's potential impacts to certain resource categories and preparing an initial study, the Central Coast Water Board prepared and circulated the Draft EIR for public

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[22] *Id.*, at pp. 29–30, paragraphs 26–33, AR0032–AR0033.

[23] *Id.*, at p. 39, paragraph 18, AR0042; General Order, Attachment B, at pp. 32–33, paragraphs 1–2, AR0415–AR0416.

[24] *Id.*, at p. 41, paragraph 20, AR0044.

[25] *See id.*, at p. 49, Table C.1-1, AR0052; *id.* at p. 55, Table C.3.-1, AR0059; *id.* at pp. 57–58, Table C.3-1.3P, AR0060–AR0061; *see also* General Order, Attachment B, at p. 21, paragraph 3, AR0405 (allowing 3P-ACP administrator to propose groundwater protection areas for implementation of groundwater protection targets).

comment.[26] The Final EIR reflects revisions made in consideration of the comments received on the Draft EIR and changes to the General Order during its development.[27] The Final EIR concludes that with implementation of the mitigation measures described in the Final EIR and in the CEQA Mitigation Monitoring and Reporting Program, the General Order will not result in any significant effects on the environment.[28]

IV. NONPOINT SOURCE POLICY

The General Order serves as an implementation program to control waste discharges from irrigated agriculture in the central coast region and is thus governed by the State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (Nonpoint Source Policy or NPS Policy).

Implementation programs for nonpoint source control must include five "key elements" articulated in the Nonpoint Source Policy, which the Third District Court of Appeal has construed in *Monterey Coastkeeper v. State Water Res. Control Bd.* (2018) 28 Cal.App.5th 342 as follows:

> (1) address [nonpoint source] pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements; (2) have a high likelihood that the program will attain water quality requirements, including consideration of the management practices to be used and the process for ensuring their proper implementation; (3) include a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements; (4) include sufficient feedback mechanisms to determine if the program is achieving its stated purpose; and (5) make clear, in advance, the potential consequences for failure to achieve the program's stated purposes.[29]

The key elements of the Nonpoint Source Policy, which are often framed as "Key Elements 1, 2, 3, 4, and 5," are the foundation for the framework and requirements of the General Order. The General Order's findings establish that the General Order is

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[26] Initial Study for Agricultural Order for Discharges from Irrigated Lands, AR35457–AR35565; Notice of Availability and Opportunity to Comment, AR6231

[27] Proposed General Waste Discharge Requirements for Discharges from Irrigated Lands (Agricultural Order), Final Environmental Impact Report (FEIR), at p. 5-1, AR4278.

[28] Resolution No. R3-2021-0039, Certification of Environmental Impact Report for the General Waste Discharge Requirements for Discharges from Irrigated Lands in the Central Coast Region, at p. 4, Finding 16, AR0486.

[29] *Monterey Coastkeeper*, 28 Cal. App. 5th at 349.

consistent with each of the key elements of the Nonpoint Source Policy, [30] and with the *Monterey Coastkeeper* ruling interpreting those elements.[31]

State Water Board Order WQ 2018-0002 (*East San Joaquin Agricultural Order)* (ESJ Order) constitutes the State Water Board's most recent precedential interpretation of the Nonpoint Source Policy as it applies to an agricultural regulatory program. The General Order's findings establish that the General Order is consistent with each element of the precedential direction in the ESJ Order.[32]

V. RESPONSES TO CONTENTIONS CONCERNING THE GENERAL ORDER

A. Responses to Contentions Raised by the Agricultural Petitioners

Contentions GS-1 through GS-10 raise issues related to the General Order. These contentions pertain to the Third-Party Alternative Compliance Pathway for groundwater protection; fertilizer nitrogen application targets and limits; 1,2,3-TCP monitoring requirements; impermeable surfaces requirements; the surface receiving water limits for pesticides; ranch-level monitoring and reporting; numeric quantifiable milestones in the surface receiving water follow-up work plan; and the "long-term cumulative impact of the General Order on central coast agriculture."

Contention GS-1: The nitrogen discharge and groundwater protection targets in the third-party alternative are actually limits. (GS Petition, pp. 24-25)

Response GS-1: The Central Coast Water Board does not agree with the contention that targets for Dischargers in a Third-Party Alternative Compliance Pathway (3P-ACP) program are essentially limits. The agricultural petitioners assert that fertilizer application targets, nitrogen discharge targets, and numeric interim and final groundwater protection targets that Dischargers in a 3P-ACP program must meet are "limits" because the consequence of repeated failure to meet the targets is loss of eligibility to remain in the third-party alternative compliance pathway program. The Central Coast Water Board disagrees with the agricultural petitioners' characterization of the application of the targets and disagrees that they are de facto limits.

The General Order establishes a 3P-ACP for groundwater protection that allows Dischargers to define specific groundwater protection areas and to determine collective numeric interim and final targets for nitrogen discharge within those groundwater protection areas.[33] The General Order and this Response to Consolidated Petitions refers to Dischargers who participate in the 3P-ACP as "Participating Dischargers."

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[30] General Order, Attachment A, at pp. 41–46, paragraphs 131–138, AR0124–AR0129.

[31] *Id.*, at pp. 46–50, paragraphs 139–148, AR0129–AR0133.

[32] *Id.*, at pp. 77–89, paragraphs 253–270, AR0160–AR0172.

[33] General Order, Attachment A, at p.162, paragraphs 78–79, AR0245.

The 3P-ACP is anchored by a workplan that must include groundwater protection areas, formulas, values, and targets protective of water quality and beneficial uses. These are the groundwater protection targets that State Water Board Order WQ 2018-0002 (ESJ Order) directs regional water boards to include in agricultural programs. The workplan is prepared by the 3P-ACP program administrator on behalf of participating Dischargers.[34] The workplans will be developed and submitted in three phases: 35%, 70% and 100% completed workplans. The General Order requires the public to have an opportunity to provide oral and written comments, and the Central Coast Water Board will also provide input at a public meeting for the first two workplan phases.[35]

For Dischargers participating in the 3P-ACP, in addition to establishing a process for development of groundwater protection targets, the General Order sets fertilizer nitrogen application targets to be met individually through 2026[36] and nitrogen discharge targets to be met individually through 2028.[37] This is roughly the timeframe over which the groundwater protection targets are expected to be developed and begin to be implemented and the targets thus ensure that Dischargers begin reducing excessive nitrogen discharges even before the 3P-ACP groundwater protection targets are put in place. Dischargers in the 3P-ACP program are provided more time to achieve fertilizer nitrogen application targets and nitrogen discharge targets when compared to Dischargers who are not participating in the 3P-ACP.[38]

To participate and retain membership eligibility in an approved 3P-ACP, a Discharger must maintain good standing; meet fertilizer application targets; meet nitrogen discharge targets; and meet collective numeric interim and final groundwater protection targets.[39] Dischargers who are members in good standing in the 3P-ACP program are not subject to fertilizer nitrogen application limits, nitrogen discharge limits, or ranch-level groundwater discharge monitoring and reporting.[40]
Exceedance of the fertilizer nitrogen application targets, nitrogen discharge targets, and groundwater protection targets are generally subject to follow-up by the approved third-party program administrator, which may include additional education, implementation of additional or improved management practices, or professional certification of the Irrigation and Nutrient Management Plan (INMP).[41]

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[34] General Order, at pp. 36–37, paragraph 15, AR0036–AR0037.

[35] General Order, Attachment B, at pp. 21-22, paragraphs 1-5, AR0405-AR406; General Order, at pp. 33-34, paragraphs 14-16, AR0036-AR0037.

[36] General Order, at p. 31, AR0034; *id*., at p.33, AR0035; *id*., at p. 54, Table C.2-1, AR0057.

[37] *Id.*, at p. 31, AR0034; *id.*, at pp. 33–34, AR0035–AR0036; *id.*, at p. 54, Table C.2-2, AR0057.

[38] *Id.*, at p.31, paragraph 1, AR0034.

[39] *Id.*, at p.19, paragraph 37, AR0019; *id.*, at pp. 32–33, paragraphs 6–8, 11–13, AR0035–AR0036; *id.*, at pp. 35, paragraphs 19–20, AR0038.

[40] *Id.*, at p. 31, paragraph 1, AR0034,

[41] *Id.*, at p. 32, AR0035; *id.*, at p. 33, AR0036; *id.*, at p. 35, AR0038.

However, repeated exceedances may lead to disqualification of the Discharger's participation in the 3P-ACP. Once no longer eligible to participate in the 3P-ACP, these Dischargers must then comply with the requirements for individual Dischargers.[42] Relevant to agricultural petitioners' contention, Dischargers not participating in the 3P-ACP for groundwater protection must meet certain fertilizer nitrogen application limits and nitrogen discharge limits.

Specifically, the agricultural petitioners' contention is based on the following provisions in Part 2, Section C.2 of the General Order:

> 8. Participating Dischargers that apply fertilizer nitrogen (A_{FER}) at rates greater than the targets in Table C.2-1 for a two-year running average after the compliance date, are no longer eligible to participate in the third-party alternative compliance pathway program and must comply with the individual groundwater protection requirements in Part 2, Section C.1. Water Board staff will coordinate with participating Dischargers prior to the Executive Officer invoking this requirement to determine if non-compliance is the result of unforeseen or uncontrollable circumstances and to provide the Discharger with 90-day advanced notice of the forthcoming individual groundwater protection requirements.[43]
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> 13. Participating Dischargers that discharge nitrogen in excess of the final nitrogen discharge target in Table C.2-2 for a three-year running average after the compliance date, are no longer eligible to participate in the third-party alternative compliance pathway program and must comply with individual groundwater protection requirements in Part 2, Section C.1. Water Board staff will coordinate with participating Dischargers prior to the Executive Officer invoking this requirement to determine if non-compliance is the result of unforeseen or uncontrollable circumstances and to provide the Discharger with 90-day advanced notice of the forthcoming individual groundwater protection requirements.[44]

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[42] *Id.*, at p. 32, paragraph 8, AR0035; *id.* at p. 33, paragraph 13, AR0036; *id.*, at p. 35, paragraph 20, AR0038

[43] *Id.*, at p. 32, paragraph 8, AR0035.

[44] *Id.*, at p. 33, paragraph 13, AR0036.

. . .

> 20. All participating Dischargers in a GWP area that exceeds the collective numeric interim and final GWP targets by 20% or more for a 3-year running average after the compliance date, are no longer eligible to participate in the third-party alternative compliance pathway program and must comply with the individual groundwater protection requirements in Part 2, Section C.1.[45]

The Central Coast Water Board disagrees that these provisions mean that the fertilizer nitrogen application targets and nitrogen discharge targets are de facto limits. Agricultural petitioners overstate the import of the provisions when they argue that "these targets are in fact limits in that failure to meet any one of the targets result in removal from the Third-Party Alternative and results in growers being subject to the individual groundwater protection requirements." To the contrary, several steps are built into each provision to ensure that failure to meet a target does not result in automatic removal from the 3P-ACP.

First, extra time and flexibility are built into the 3P-ACP membership eligibility requirements and the time schedules for fertilizer nitrogen application and nitrogen discharge targets to incentivize participation in the 3P-ACP program and to allow time for the third-party program administrator to coordinate with its members as needed to help them meet the targets and maintain their third-party membership eligibility. The 3P-ACP membership eligibility requirements in the General Order are reasonable and will provide the third-party program administrator with clear metrics to determine the Dischargers that need follow-up technical assistance the most.

Second, loss of eligibility to participate in a third-party program is not immediate, as the agricultural petitioners imply. Rather, the General Order establishes one-, two- and/or three-year feedback windows to inform the Discharger and third-party program administrator whether the targets are being met and to implement follow-up actions that include education and outreach to help Dischargers meet the targets.[46] In addition to the extra year 3P-ACP members are given to meet the targets as compared to Dischargers that are not 3P-ACP members, this approach provides ample time for the third-party administrator to help participating Dischargers meet the targets before they lose their third-party eligibility and become subject to the General Order individual requirements. With regard to the groundwater protection targets, an additional 20% allowance is provided above the target before Dischargers in the groundwater protection area are considered in exceedance of the target.

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[45] *Id.*, at p. 35, paragraph 20, AR0038.

[46] *Id.*, at p. 32, paragraphs 6–8, AR0035; *id.*, at p. 33, paragraphs 11–13, AR0036; *id.*, at p. 35, paragraphs 19–20, AR0038.

Third, the provisions provide that the Central Coast Water Board will provide advance notice of the loss of eligibility and allow flexibility for the Discharger to remain in the 3P-ACP where the exceedances are the result of unforeseen and uncontrollable circumstances.

The agricultural petitioners argue that the State Water Board's ESJ Order prescribes limited circumstances in which a target can be used in a permit that regulates waste discharges from irrigated agricultural land.[47] The State Water Board's ESJ Order does not specifically define the term "target" or constrain how regional boards can use targets. Nothing in the ESJ Order precludes the use of nitrogen discharge targets that, if not met, trigger additional requirements such as training, professional certification, and management practice improvements. In fact, the ESJ Order similarly imposes additional requirements such as training, management practice improvement, and INMP certification on dischargers who are identified by the third-party program administrator as outliers based on reported AR data.[48] The Central Coast Water Board acknowledges that the ESJ Order states that "it is premature at this point to project the manner in which the multi-year A/R ratio target values might serve as regulatory tools."[49] (The Central Coast Water Board provides a detailed discussion of the limited use of nitrogen discharge limits in the General Order in response to Contention GS-5 below.) The Central Coast Water Board disagrees that the provisions providing for loss of eligibility of Dischargers for the 3P-ACP as a last resort, after repeated exceedances of a target and after an opportunity to address exceedances, constitute regulatory limits disallowed by the ESJ Order.

It should be noted that there is State Water Board precedent approving analogous, even if not identical, frameworks for cooperative compliance in the context of regulating municipal stormwater discharges. State Water Board Order WQ 2015-0075 (Lost Angeles County MS4 Permit) approved a cooperative, watershed-based alternative compliance pathway for municipal storm water dischargers. The Los Angeles County MS4 Permit provided that a discharger out of compliance with the requirements of the applicable watershed management program in accordance with the compliance schedule would be immediately subject to receiving water limitations or total maximum daily load-derived interim or final effluent limitation and other limitations.[50] Here, Dischargers failing to meet the requirements of the 3P-ACP are similarly held to the limits of the individual compliance program.

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[47] GS Petition, at pp. 24–25.

[48] State Water Board Order WQ 2018-0002, at p. 52, AR33556.

[49] *Id.*, at p. 74, AR33578.

[50] *See* State Water Board Order WQ 2015-0075, at pp. 33–35.

Contention GS-2: Rigid numeric eligibility requirements will undermine the viability of the third-party alternative. (GS Petition, pp. 25-28)

Response GS-2: The Central Coast Water Board disagrees with this contention. The agricultural petitioners argue that the nitrogen discharge and nitrogen application targets that must be met to maintain eligibility in the 3P-ACP program are inflexible and will result in Dischargers most needing third-party assistance being ineligible to participate in the 3P-ACP program. In particular, the agricultural petitioners caution that meeting the 2028 nitrogen fertilizer discharge target of 300 lbs-N/acre-year will be challenging for a subset of Dischargers. The agricultural petitioners restate the position they advocated for during the proceedings on the General Order that a Discharger should lose eligibility for the 3P-ACP program only if the Discharger "is not working with the third-party in good faith to make reasonable and practicable improvement necessary to meet final nitrogen discharge targets."[51]

The Central Coast Water Board agrees with the agricultural petitioners that a third-party program is a valuable and effective approach to advancing water quality for all the reasons the agricultural petitioners point to: effective outreach to Dischargers built on trusted relationships, greater resources to provide training and disseminate management practices information, and a comprehensive follow-up program are a few of those benefits. It is precisely for these reasons that the Central Coast Water Board incorporated the 3P-ACP into the General Order, and to this end, prior to the close of the December 8, 2020 Board meeting, the Central Coast Water Board requested its staff to, in January 2021, present the most recent third-party program proposals submitted by commenters.[52]

However, the Central Coast Water Board does not agree that a subjective determination as to whether a Discharger is working with the third-party in good faith is sufficient to ensure that progress is made by Participating Dischargers. The agricultural petitioners' preferred "attempted compliance" approach to maintaining membership in the 3P-ACP program is not sufficiently tied to a clearly defined or meaningful water quality performance metric.[53] The General Order reasonably incorporates a process by which

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[51] GS Petition, at p. 26.

[52] *E.g.*, Minutes, September 10, 11, 23, 24, 2020, October 22-23, 2020, December 9-10, 2020, and January 7- 8, 2021 Board Meetings, at p. 12, AR9852 (minutes to December 10, 2020 meeting); *id*., at pp. 14–16, AR9854–AR9856 (minutes to January 7-8, 2021 meeting); Video recording, December 10, 2020 Board Meeting, beginning 6:13:39. While the Central Coast Water Board has been effectively regulating agricultural activities since 2004 and has developed online enrollment, reporting and data management tools along with prioritization and outreach and education strategies, the Central Coast Water Board also recognizes the benefits associated with a third-party program.

[53] State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (Nonpoint Source Policy or NPS Policy) states that "[management practice] implementation never may be a substitute for meeting water quality requirements. . . ." NPS Policy, at p. 12, AR32831; *see also Monterey Coastkeeper v. State Water Res. Control Bd.* (2018) 28 Cal. App. 5th 342, 369 ("vague and indefinite improvement – 'a conscientious effort'" does not comply with the Nonpoint Source Policy).

Dischargers repeatedly falling short of demonstrating progress toward meeting water quality requirements can no longer have the benefit of the 3P-ACP and must comply with individual limits.

The Central Coast Water Board added provisions to the General Order establishing the 3P-ACP for groundwater protection in response to comments and a proposal from some of the agricultural petitioners (referred to as the Ag Partners) and discussion among the Regional Board members and with the Regional Board's staff at noticed board meetings.[54] The Ag Partners proposed a third-party cooperative program that would replace various requirements for groundwater protection, including the nitrogen fertilizer application limits and nitrogen discharge targets and limits, with a groundwater protection area, formula, value, and target methodology.[55] The proposal did not provide sufficient certainty that necessary water quality results would be achieved. Under the Ag Partners' proposal, ultimately incorporated with modifications into the General Order, the groundwater protection area interim and final targets would be based on and applied to to-be-determined basin-scale areas to guide and evaluate collective compliance towards improving groundwater quality based on a to-be-determined mixing model (i.e., the formula) including freshwater inputs and other factors (i.e., the values) such that Dischargers within the groundwater protection area would be able to discharge varying amounts of nitrogen to meet the basin-scale targets. The proposed program did not explain how nitrogen discharges among Dischargers would be apportioned and controlled to achieve the protection area targets while also addressing localized and boundary effects of differential loading to groundwater. As such, the Central Coast Water Board was uncertain how effective the proposal would be in protecting and restoring groundwater quality at both localized and basin-wide scales. The Central Coast Water Board concluded that, in addition to requiring public participation and Regional Board oversight in the development of the groundwater protection targets, requirements to maintain eligibility to participate in the 3P-ACP were necessary to ensure necessary water quality improvements.[56] The Central Coast Water Board did not agree that Dischargers should be provided relief from fertilizer nitrogen application and nitrogen discharge limits in exchange for participating in a third-party program without

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[54] Minutes, September 10, 11, 23, 24, 2020, October 22-23, 2020, December 9-10, 2020, and January 7- 8, 2021 Board Meetings, at pp. 14–16, AR9854–AR9856 (minutes to January 7-8, 2021 meeting); FEIR, at p. 2-11, AR1540 (Master Response 2.2.3); *id*., at p. 3-638, AR2223 (Response to Comment BN-262).

[55] *E.g.*, *see generally* Ex Parte Communication from Abby Taylor-Silva to Vice Chair Jane Grey, October 14, 2020, AR17407–AR17429. Each Regional Board member received a copy of this ex parte communication; *see also* Ag Partners, Written Comments Received February 25, 2021, at pp. 7, 9, AR11624, AR11625.

[56] Video recording, January 8, 2021 Board Meeting, at 14:12 (discussing "backstops").

showing measurable and reasonable progress towards reducing nitrogen application and discharge to meet water quality objectives and protect beneficial uses.[57] A majority of the Dischargers who have been reporting total nitrogen applied (TNA) since 2014 already meet the nitrogen application limits and the first three incremental nitrogen discharge targets that apply to Dischargers in a 3P-ACP program.[58] In addition to a majority of growers already being able to meet the targets, as described in response to Contention GS-1, when a Discharger exceeds the targets, the General Order allows time for the third-party program administrator to work with that member during the first year of a two-year period (application targets) or during the first and second years of a three-year period (discharge targets) to identify and correct deficiencies before the Discharger potentially loses eligibility to remain in the 3P-ACP and becomes subject to the General Order individual Discharger requirements.[59] Further, the Executive Officer will first determine if there were any unforeseen or uncontrollable circumstances before revoking the Discharger's 3P-ACP membership.[60]

Notwithstanding the fact that the majority of Dischargers already meet the 3P-ACP's targets, the Central Coast Water Board acknowledges that the focus of the agricultural petitioners' concern in this contention appears to be that the subset of Dischargers farming on a multiple cropping cycle are particularly vulnerable to losing 3P-ACP eligibility under the General Order's provisions because they face unique challenges in meeting the targets, particularly starting with the 300 pounds of nitrogen per acre per year discharge target that goes into effect in 2028. During the September 23, 2020 Board meeting, the Central Coast Water Board heard the concern of a University of California Cooperative Extension researcher that an expert panel should be convened to determine whether Dischargers could feasibly attain the 300 pounds of nitrogen per acre per year discharge rate.[61] The Central Coast Water Board addressed this concern in its responses to written comments, stating that a nitrogen discharge rate at or lower than "300 pounds/acre[/year] will be difficult to achieve for many growers using current

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[57] Video Recording, January 8, 2021 Board Meeting, at 23:59 (Board members discussing fertilizer application target compliance as a requirement to maintain third-party program membership); *id*., at 43:00 through 55:38 (Board members discussing nitrogen discharge target compliance as requirement to maintain third-party program membership, acknowledging existing water quality problems, recognizing that targets may not be attainable "today," and describing the targets as "adaptive," "dynamic," and "iterative").

[58] General Order, at p. 51, AR0054; *id.* at p. 54, AR0057; General Order, Attachment A, at pp. 145–147, AR0228–AR0230; General Order, Attachment A, at pp. 147–148, paragraph 25 & Table A.C.1-4, AR0230–AR0231; *see also* discussion in Response to Contention GS-3. Moreover, for the nitrogen discharge targets and limits, three compliance pathways are available, which offer flexibility to Dischargers. General Order, Attachment A, at p. 148, paragraph 27, AR0231.

[59] General Order, at p. 32, paragraph 8, AR0035; *id.*, at p. 33, paragraph 13, AR0036.

[60] *Id.*, at p. 32, paragraph 8, AR0035; *id.*, at p. 33, paragraph 13, AR0036.

[61] Video Recording, September 23, 2020 Board Meeting, at 5:09:10 (Dr. Joji Muramoto, University of California Cooperative Extension, discussing feasibility of meeting 300 lbs/acre/year nitrogen discharge rate); *id*., at 5:14:45 (Board Member Young distinguishing between the mandate to protect water quality and alleged infeasibility of meeting proposed discharge rate).

technology and farming techniques, *particularly in situations where multiple crops are rotated on a given field during the course of a year*. For this reason, the RAO 4.0 includes a . . . stipulation that 'Final year 2028 nitrogen discharge targets for compliance pathways 1 and 3 in Table C.2-2 will be re-evaluated based on discharger reported nitrogen applied and removed data, new science, management practice effectiveness evaluations, and third-party GWP targets before becoming effective' (RAO, Part 2, Section C.2, 10)."[62]

The 3P-ACP program eligibility requirements are reasonable. They will incentivize Dischargers to meet the targets until the 3P-ACP program is developed and implemented. The eligibility requirements will also incentivize the 3P-ACP program administrator to work closely with its participating members to implement effective management practices during the 3P-ACP program development process, instead of waiting until the groundwater protection area interim and final targets are developed and approved. This framework further provides continued incentive for participating Dischargers to contribute to the collective compliance with the groundwater protection area targets and for the 3P-ACP program administrator to work closely with them toward that goal once the groundwater protection targets are developed and effective.

Contention GS-3: The Central Coast Water Board does not have the legal authority to adopt fertilizer nitrogen application limits or targets. (GS Petition, pp. 28-30)

Response GS-3: The agricultural petitioners argue that "[b]ecause the application of fertilizers cannot be considered 'waste,' the application of such inputs to fields cannot be considered a discharge of waste" for which application limits and targets can be imposed."[63]

The Central Coast Water Board disagrees that the fertilizer application limits cannot be established due to applied fertilizer not being a waste under the Porter-Cologne Act. The agricultural petitioners' argument overlooks that substances with useful purposes, such as fertilizers or pesticides, can become a waste when their application has impacts outside of the area of intended use and affects water quality. The agricultural petitioners rely on *Sweeney v. California Regional Water Quality Control Board* (2021) 61 Cal.App.5th 1093, but this case does not support the position that the fertilizer application limits are improper. The *Sweeney* Court stated: "We follow *Lake Madrone* which clearly instructs that Porter-Cologne does not require 'waste' to be sewage or some sort of worthless byproduct. Its characterization did not turn on the purported value of the discharged material but rather the harm it caused to the environment."[64]

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[62] FEIR, vol. 3, at p. 2-54, AR1583 (emphasis added).

[63] GS Petition, at p. 30.

[64] 61 Cal.App.5th 1093, 1119 (citing *Lake Madrone Water District v. State Water Resources Control Board* (1989) 209 Cal.App.3d 163, 170).

When amending the federal Clean Water Act in 1972, the Senate Committee on Public Works specifically recognized that fertilizers used in agriculture were a source of pollution: "Agricultural runoff, animal wastes, soil erosion, fertilizers, pesticides and other farm chemicals that are a part of runoff, construction runoff and siltation from mines and acid mine drainage are major contributors to the Nation's water pollution problem."[65] Fertilizers, like pesticides, serve a useful purpose but also can be overapplied. Federal courts have held that pesticides that are intentionally applied to perform a particular useful purpose and do not leave excess portions after performing their intended purpose (and thus do not affect surface waters) are not a "chemical waste" within the Act's definition of pollutant.[66] When contemplating "terrestrial" pesticides that are applied to land or dispersed through air, the Sixth Circuit held, "At some point following application, excess pesticide or residual pesticide finds its way into the navigable waters of the United States. Pesticides applied in this way and later affecting the water are necessarily 'discarded,' 'superfluous,' or 'excess' chemical. Such chemical pesticide residuals meet the Clean Water Act's definition of 'chemical waste.'"[67] Similarly, excess fertilizer that finds its way into waters of the state, including groundwaters, is a waste. These principles are consistent with California Attorney General's Opinion No. 63-176 construing the predecessor to the Porter-Cologne Act. The Attorney General opined that substances such as insecticides, pesticides, and herbicides that "find their way into the waters of the state *after their use for agricultural purposes* . . . would constitute an industrial waste."[68] Inherent in the opinion is that a portion of the applied insecticides, pesticides, and herbicides are used and do not ever "find their way to the waters of the state." This reasoning extends to applied fertilizers despite not being specifically identified in the opinion because overapplication of fertilizers may occur and affect waters of the state. In establishing fertilizer application limits, the Central Coast Water Board does not dispute that synthetic fertilizer nitrogen that is used by crops serves beneficial purposes and is not a waste. But when fertilizer is overapplied and not used by crops, the overapplied or residual portion becomes a discharge to land that "find[s its] way to the waters of the state" by percolating to groundwater.

The fertilizer nitrogen application limits in Table C.1-2 and targets in Table C.2-1 of the General Order address the overapplication of fertilizer and reflect rates of application over which the Central Coast Water Board has determined will lead to a discharge of nitrogen in groundwater. Thus, the fertilizer application limits are a proxy for overapplied or residual fertilizer and nitrogen discharge to groundwater, through land application and percolation.[69] This determination is based on data the Central Coast Water Board has

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[65] Senate Report (Public Works Committee) No. 92-414, Oct. 28, 1971, 1972 U.S.C.C.A.N. 3668, 3705.

[66] *E.g.*, *Nat'l Cotton Council of Am. v. U.S. Environmental Protection Agency* (6th Cir. 2009) 553 F.3d 927, 936; *Fairhurst v. Hagener* (9th Cir. 2005) 422 F.3d 1146, 1149.

[67] *Nat'l Cotton*, 553 F.3d, at p. 936.

[68] 43 Ops.Cal.Atty.Gen. 302 (1964).

[69] FEIR, vol. 3, at p. 3-593, AR2178 (Response to Comment BN-19).

collected from years of regulating waste discharges from irrigated agriculture in the region. “The Central Coast Water Board is uniquely-situated to determine and impose fertilizer application limits that act as a proxy for overapplied or residual fertilizer. Since 2014, the Central Coast Water Board has collected and analyzed fertilizer application data, and the Board has developed technical expertise to distinguish between reasonable fertilizer application rates and those that reflect overapplication constituting a discharge.”[70]

The Central Coast Water Board has demonstrated that one of the primary drivers of nitrate contaminated groundwater in the central coast region is overapplication of synthetic fertilizer nitrogen. As explained in the Responses to Comments on the Draft Agricultural Order,

> groundwater quality data document that of the over 2600 on-farm domestic wells sampled during Agricultural Orders 2.0 and 3.0 (2012 through 2019), 28 percent had mean concentrations that exceeded the nitrate maximum contaminant level for drinking water and the concentrations in some groundwater basins were significantly higher than the regional average of 11.0 mg/l NO3-N (RAO 4.0, Attachment A at page 94, paragraphs 8-9). Further, analysis of nitrate trends in individual wells indicate that regionwide 13 percent show increasing trends in nitrate concentrations while only 8 percent show decreasing trends (water quality is getting better for nitrate) and in some groundwater basins, the number of wells with increasing trends greatly exceeds the number of wells with decreasing trends, indicating water quality is continuing to degrade for nitrate (RAO 4.0, Attachment A at pages 95-96, paragraph 10). The primary drivers of the observed increase in nitrate concentration in groundwater are over-application of synthetic fertilizer nitrogen, the amount of residual nitrogen remaining in the field after crops are harvested, under-utilization of nitrate present in the soil and/or irrigation water, and inefficient irrigation (RAO 4.0, Attachment A, page 96-97, paragraphs 11-16). RAO 4.0, Attachment A, at pages 96-101, paragraphs 11-24 further details the sources and primary drivers of nitrate contamination in groundwater.[71]

The numeric values for the targets and limits reflect rates of application over which the Central Coast Water Board has determined will lead to a discharge of nitrogen to groundwater. In response to comments received on the Revised Draft Agricultural

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[70] *Id*.

[71] *Id.*, vol. 3, at p. 2-13, AR1542.

Order, the Central Coast Water Board explained, "Grower reported fertilizer nitrogen application data collected since 2014 were analyzed [and] compared to published application ranges to distinguish between reasonable fertilizer application rates and those that reflect over application constituting a discharge."[72] For six specific crops that represent 75 percent of all crop total nitrogen applied data that is reported annually to the Central Coast Water Board, the fertilizer application targets and limits are based on the 90th and 85th percentile of the fertilizer application rates for each crop using year 2014 to 2019 total nitrogen applied reporting information.[73] This means that 90 percent of reporting Dischargers are already meeting the 2023 limits (2024 targets for 3P-ACP members) and 85 percent are already meeting the 2025 limits (2026 target for 3P-ACP members). The data represents approximately 700 ranches and 117,000 acres.[74] The targets and limits are consistent with, if not higher than, fertilizer application rates that the California Crop Fertilization Guidelines recommend.[75] For all other crops, the fertilizer application targets and limits are initially set at 500 pounds per acre per crop, which represents an application rate that over 98 percent of all crops are currently achieving, before decreasing to 480 pounds of nitrogen per acre per crop two years later.[76] These application targets and limits properly regulate the amount of overapplied or residual fertilizer that is discharged to groundwater.

Contention GS-4: The General Order improperly requires monitoring for 1,2,3-Trichloropropane (1,2,3-TCP). (GS Petition, pp. 31-34)

Response GS-4: The Central Coast Water Board disagrees with this contention. The monitoring and reporting requirements in the General Order are governed by Water Code section 13267. Water Code section 13267 authorizes a regional board to investigate the quality of the waters of the state within the region subject to the regional board's authority. As a part of that investigation, the regional board may require technical or monitoring program reports from "any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region."[77]

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[72] Responses to Comments, RAO, at p. 12, AR16538 (Master Response 2.5).

[73] General Order, at p.51, AR0054; *id.* at p. 54, AR0057; General Order, Attachment A, at pp. 143–147, AR0226–AR0230.

[74] General Order, Attachment A, at p.143, paragraph 17, AR0226

[75] *Id.*, at pp. 144–147, AR0227–AR0230. The nitrogen application targets and limits are thus established through an "outlier" approach utilized in the ESJ Order to determine the subset of dischargers subject to follow-up requirements, in that the identification of the subset is based on a population comparison.

[76] General Order, at p.51, AR0054; *id.*, at p. 54, AR0057; General Order, Attachment A, at p. 147, AR0230.

[77] Wat. Code § 13267, subd. (a), (b)(1); *see also Sweeney v. California Regional Water Quality Control Bd., San Francisco Bay Region* (2021) 61 Cal. App. 5th 1093, 1114–16, as modified on denial of reh'g (Mar. 18, 2021), review filed (Mar. 29, 2021).

Under the General Order, landowners are Dischargers responsible for compliance with the General Order requirements.[78] The Findings establish that Dischargers enrolled in the General Order, specifically current landowners, are suspected of having discharged or discharging 1,2,3-TCP, and that the burden of the monitoring and reporting requirement is reasonable in light of the need and benefits to be obtained.[79] As discussed in the Findings, the estimated average cost per sample for the irrigation and domestic well monitoring requirements in the General Order is $205.[80] The portion of the analytical cost per sample attributable to 1,2,3-TCP is estimated to be less than $205, on average. Additionally, the Findings contemplate "the potential for 1,2,3-trichloropropane sampling and analysis for domestic wells to cease based on initial sampling results."[81]

The Findings also explain that 1,2,3-TCP is classified as a human carcinogen, and drinking 1,2,3-TCP-contaminated water poses potential health risks. The central coast region is highly dependent on groundwater for drinking water, and recent exceedances of the 1,2,3-TCP in groundwater have resulted in the need to provide alternate drinking water supply for persons dependent on contaminated wells.[82] To prevent unnecessary monitoring and expense, the monitoring and reporting requirements for 1,2,3-TCP are annual for the first two years of the General Order, and if the parameter is not detected, the frequency of monitoring decreases and ultimately is no longer required.[83]
The Findings identify the applicable water quality objective for 1,2,3-TCP, which is based on the primary drinking water standard maximum contaminant level (MCL), as 0.005 micrograms per liter.[84] The Central Coast Water Board found that not only does a clear correlation exist between agricultural/industrial areas and the location of drinking water sources that exceed the MCL but also that the results of private domestic well sampling in the central coast region indicate exceedances of the MCL, which are co-located with detections of nitrate above the applicable drinking water standard MCL.[85]

The Central Coast Water Board acknowledged that products containing 1,2,3-TCP are likely no longer in use by the agricultural community.[86] Therefore, the Central Coast

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[78] General Order, Attachment C at 9, paragraph 33, AR0465 (defining "Discharger"); *see also* General Order, at p.11, paragraph 6, AR0014 ("Both the landowner and the operator are Dischargers and considered a responsible party for compliance with the requirements of this Order."); *id.* at p. 14, paragraph 23, AR0017 ("The Central Coast Water Board will hold both the landowner and the operator liable for noncompliance with this Order.").

[79] General Order, Attachment A, at pp. 167–168, AR0250–AR0251; *id.*, at p. 18, paragraph 54, AR0101.

[80] *Id.*, at p. 18, paragraph 54, AR0101.

[81] *Id.*, at p. 18, paragraph 54 & fn. 3, AR0101.

[82] *Id.*, at p. 67, paragraph 208, AR0150; *id.*, at pp. 167–168, AR0250–AR0251.

[83] General Order, Attachment B, at p. 38, Table MRP-5, AR0422.

[84] General Order, Attachment A, at p. 167, AR0250.

[85] *Id.*; SWRCB (2018) 1,2,3-Trichloropropane Sampling in Q1 2018, AR27911.

[86] General Order, Attachment A, at p. 167, AR0250.

Water Board relied on the State's longstanding interpretation of the term "discharge" that includes "the entire time during which the discharged waste remains in the soil or groundwater and continues to impact or to threaten the groundwater."[87] In the General Order, the Central Coast Water Board found that because 1,2,3-TCP easily migrates in groundwater and has been found present in groundwater in the central coast region, 1,2,3-TCP discharged as part of soil fumigation activities on agricultural land may have migrated or may be continuing to migrate from contaminated soil to uncontaminated groundwater, or from contaminated groundwater to uncontaminated groundwater.[88] The State Water Board has held in *In re Zoecon Corp.*, State Water Board Order No. WQ 86-2, that for the purposes of Water Code section 13263, subdivision a, and determining whether to issue waste discharge requirements, current landowners are dischargers due to passive, continuing migration of waste, despite not having directly discharged waste on the property.[89] Although the General Order is not a clean-up and abatement order under Water Code section 13304, the manner in which "discharge" is defined in caselaw interpreting that code section informs the term "discharge" as used in section 13267. In *Tesoro Refining & Marketing Co. LLC v. Los Angeles Regional Water Quality Control Board* (2019) 42 Cal.App.5th 453, the Second District Court of Appeals made clear that under the Water Code section 13304 provisions related to issuing a cleanup and abatement order, "[a]n actionable discharge . . . encompasses not simply the initial episode of contamination, but rather includes the time during which the waste uncontrollably flows or migrates from its source, through the soil, and into and within the groundwater."[90] In both of these cases, the initial discharge of waste was irrelevant to the tribunal's decision, and neither case constrains the definition of "discharge" to only those circumstances where the initial source of the contamination is discrete and onsite, as the agricultural petitioners argue.[91]

As stated above, the requirement to monitor for 1,2,3-TCP is authorized through Water Code section 13267. In contrast to waste discharge requirements issued under section 13263 and cleanup and abatement orders issued under section 13304 that respectively require the Regional Board to demonstrate that a person either (1) proposes to discharge or (2) has "discharged or discharges waste" or "caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is or probably will be discharged into waters of the state. . . [,]" the minimum threshold finding to require monitoring and reporting under section 13267 is *suspicion* of discharging or having discharged waste.[92] The statutory text is clear that the showing under section 13267 to require monitoring and reporting is

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[87] *Tesoro Refining & Marketing Co. LLC v. Los Angeles Regional Water Quality Control Board* (2019) 42 Cal.App.5th 453, 472 (upholding, after discussing, State interpretation of "discharge").

[88] General Order, Attachment A, at pp. 167–168, AR0250–AR0251.

[89] *In re Zoecon Corp.*, State Water Board Order No. WQ 86-2, at p. 3-4.

[90] *Tesoro*, 42 Cal.App.5th, at p. 472.

[91] GS Petition, at p. 33.

[92] *Compare* Wat. Code §§ 13263(a) and 13304 *with* Wat. Code § 13267.

less than that required to issue waste discharge requirements under section 13263 and a cleanup and abatement order under section 13304.

The Central Coast Water Board has established that owners of agricultural land regulated by the General Order are suspected of discharging 1,2,3-TCP through passive migration due to the general historical use of products containing 1,2,3-TCP while conducting agricultural activities; correlation between agricultural land and detections of 1,2,3-TCP in groundwater; and recent sampling results indicating exceedances of 1,2,3-TCP in groundwater in the central coast region. The Central Coast Water Board has further established that the burden of the monitoring and reporting requirement is reasonable in light of the need and benefits to be obtained.

Contention GS-5: Nitrogen discharge limits directly contradict State Water Board precedent and are a misuse of risk equations. (GS Petition, pp. 34-37)

Response GS-5: Petitioners' contention is an oversimplification of the use of nitrogen discharge limits in the General Order and is unfounded. The Central Coast Water Board was cognizant of the ESJ Order's precedential direction throughout the proceedings to adopt the General Order[93] and crafted the nitrogen discharge-related requirements carefully to be consistent with the precedential direction.[94] At the same time, recognizing that it was issuing waste discharge requirements that could regulate agricultural discharges for the foreseeable future, the Regional Board applied its unique and long-standing experience with collecting and studying nitrogen data and monitoring groundwater quality to adopt reasonable and necessary requirements addressing a well-documented and significant water quality and public health issue.

As such, it is essential to recognize the actual, limited manner in which the General Order imposes nitrogen limits and the basis for these limits. As is discussed in greater detail below:

- For Dischargers that elect to participate in the 3P-ACP, the General Order establishes a procedure for development of groundwater protection targets, as directed by the ESJ Order. While the Groundwater Protection Targets are being developed, these Dischargers are subject to interim nitrogen discharge *targets* that, if exceeded, may trigger additional requirements such as training, INMP certification, or management practice implementation. The General Order *does not* include nitrogen discharge limits for Dischargers who elect to participate in the 3P-ACP. This approach is fully consistent with the precedential direction in the ESJ Order.

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[93] *See*, *e.g.*, General Order, Attachment A, at pp. 77–89, paragraphs 253–270, AR0160–AR0172.

[94] *See id.*, at pp. 80–86, 87–89, paragraphs 260–265, 269–270, AR0163–AR0169, AR0170–AR0172 (discussing consistency with the ESJ Order); *see also id.*, at pp. 149–163, paragraphs 29–81, AR0232–AR0246 (discussing basis for nitrogen discharge limits).

- The General Order incorporates nitrogen discharge limits only for Dischargers electing not to participate in the 3P-ACP, and only beginning in 2027. These limits are phased in over 24 years, with the final limits enforceable only at the end of 2051.

- Even with this narrow application of limits, the General Order specifically commits to a reevaluation of the initial 2027 limit based on discharger-reported data, new science, and management practice and assessment, prior to the limits becoming effective.

A. The General Order's Application of Nitrogen Discharge Targets, Nitrogen Discharge Limits, and Groundwater Protection Targets

Although the nitrogen discharge targets and limits for groundwater discharges in the General Order have already been discussed in the preceding responses, but they are summarized again below to make the interplay between nitrogen discharge targets, nitrogen discharge limits, and groundwater protection targets very clear.

Dischargers not participating in the 3P-ACP: Part 2, Section C.1.8 of the General Order states that nitrogen discharge targets go into effect December 31, 2023, and nitrogen discharge limits go into effect December 31, 2027.[95] These targets and limits are established in Table C.1-3[96] for three alternative Compliance Pathways. The Compliance Pathway is the particular formula by which the Discharger chooses to demonstrate compliance. The Compliance Pathways are discussed further below.

Table C.1-3 establishes targets to be met in 2023 and 2025. The first limit is established at the end of 2027 and the allowable limit is ratcheted down over the course of the next 24 years in four- or five-year increments until the final limit at the end of 2051. For Compliance Pathway 1, the 2027 limit is 300 pounds of nitrogen per acre per year, the 2051 limit is 50 pounds of nitrogen per acre per year. Three hundred pounds of nitrogen per acre per year represents a discharge amount that almost two thirds of dischargers were already achieving as of 2019.[97]

Dischargers participating in the 3P-ACP: For "Participating Dischargers," *i.e.*, dischargers enrolled in a 3P-ACP, the General Order does not require compliance with nitrogen discharge limits.[98] Rather, the General Order directs development of groundwater protection targets by the approved 3P-ACP, for collective compliance by

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[95] General Order, at p. 23, paragraph 8, AR0026.

[96] *Id.*, at p. 52, Table C.1-3, AR0055.

[97] General Order, Attachment A, at p. 148, paragraph 25, AR0231.

[98] General Order, at p. 31, paragraph 1.b, AR0034.

Participating Dischargers within specified groundwater protection areas, consistent with the precedential direction in the ESJ Order.[99]

Additionally, the General Order sets nitrogen discharge *targets* for Participating Dischargers[100] to be met individually through 2028 in Table C.2-2.[101] This is roughly the timeframe over which Groundwater Protection Targets are expected to be developed and begin to be implemented. Participating Dischargers are allowed more time to achieve these targets compared to Dischargers that are not Participating Dischargers.[102] For Compliance Pathway 1, the final target in 2028 is 300 pounds per acre per year.[103]

Nitrogen discharge targets and limits and groundwater protection targets and the associated time schedules are established as quantifiable milestones per Key Element 3 of the NPS Policy to measure progress toward protecting water quality and public health.[104]

B. Consequences of Exceeding Targets vs. Limits

As discussed in Section III.B above, the General Order distinguishes between the consequences of exceeding a target and exceeding a limit. Exceedance of target is not a permit violation but instead may trigger additional requirements), including education, professional certification of the INMP, demonstration of implementation of improved management practices, increased monitoring and reporting, and, in extreme cases, loss of eligibility for participation in the third-party alternative compliance pathway

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[99] *Id.*, at pp. 33–35, paragraphs 14–20, AR0036–AR0038; General Order, Attachment B, Section D, at pp. 21–22, AR0405–AR0406.

[100] General Order, at p. 31, paragraph 1.c, AR0034; *id.*, at pp. 32–33, paragraph 9, AR0035–AR0036.

[101] *Id.*, at p. 54, Table C.2-2, AR0057.

[102] *Compare id.*, at p. 52, Table C.1-3, AR0055, with *id.* at p. 54, Table C.2-2, AR0057.

[103] *Id.*, at p. 54, Table C.2-2, AR0057. While imposing only targets, not limits, the General Order states that the final year nitrogen discharge targets "will be re-evaluated based on discharger reported nitrogen applied and removed data, new science, management practice effectiveness assessment and evaluation, and groundwater protection area collective numeric interim and final targets before becoming effective." *Id.*, at p. 33, paragraph 10, AR0036.

[104] NPS Policy, at p. 13, AR32832.

program.[105] In contrast, exceedance of a limit is a permit violation that could additionally lead to progressive enforcement.[106]

Nothing in the ESJ Order precludes the use of nitrogen discharge targets that, if not met, trigger additional requirements such as training, professional certification, and management practice improvements. In fact, the ESJ Order similarly imposes additional requirements on Dischargers who are identified by the third-party program administrator as outliers based on reported AR data. Such ESJ Order requirements include that dischargers "attend additional INMP self-certification training in person or work with an irrigation and nitrogen management plan specialist for certification of the next INMP prepared following notification [of outlier status]."[107] Additionally, outliers' "INMP Summary Report will then be expected to reflect additional or improved management practices implemented to address potential over-application of nitrogen."[108]

C. Commitment to Evaluation of Limits Prior to the First Compliance Date

Where nitrogen discharge limits apply, the General Order commits to a reevaluation of the limits prior to the first 2027 compliance deadline:

> The initial 2027 nitrogen discharge limits, as shown in Table C.1-3 will be reevaluated based on Discharger reported nitrogen applied and removed data, new science, and management practice implementation and assessment *before becoming effective.*[109]

The General Order further explains that the 2027 date was set in part to allow time for the State Water Board to convene an expert panel for review and evaluation of AR values as regulatory tools, as projected by the ESJ Order.

> The A-R data-based nitrogen discharge values established by this Order act only as targets until 2027 to allow for the learning curve associated with the new monitoring and

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[105] General Order, at p. 27, paragraphs 19–20, AR0030; *id.*, at p. 33, paragraphs 11–13, AR0036. Eligibility for participation in the third-party alternative compliance pathway program may be revoked only if a Participating Discharger discharges nitrogen in excess of the final nitrogen discharge targets for a three-year running average after the compliance date, and then only if the Executive Officer determines that the noncompliance is not the result of unforeseen or uncontrollable circumstances. These provisions are discussed in detail in response to Contentions GS-1 and GS-2.

[106] *Id.*, at p. 27, paragraph 20, AR0030; General Order, Attachment A, at p. 88, AR0171, paragraph 269.d. These consequences are established in compliance with NPS Policy Key Element 5 (NPS Policy, at pp. 14–15, AR32833–AR32834).

[107] State Water Board Order WQ 2018-0002 at p. 52, AR33556.

[108] *Id.*

[109] General Order, at p. 29, paragraph 25, AR0032 (emphasis added).

> reporting requirement, as well as to provide additional time for the State Board to convene an expert panel for review and evaluation of the AR values as regulatory tools. Beginning in 2027, the A-R values are implemented as limits, with the final limit of 50 pounds per acre not effective until 2051 . . . .
>
> If prior to 2027 or anytime thereafter an expert panel finds that another regulatory method would be more protective of water quality, or if the more protective regulatory methods are identified through other sources, the Central Coast Water Board will review the requirements of this Order and will make modifications as appropriate.[110]

In providing for a pause and reevaluation prior to 2027, the General Order is directly responsive to the precedent set by the ESJ Order. The ESJ Order states:

> It is premature at this point to project the manner in which the multi-year A/R ratio target values[111] might serve as regulatory tools. That determination will be informed by the data collected and the research conducted in the next several years. If we move forward with a new regulatory approach in the future, we expect to do so only after convening an expert panel that can help evaluate and consider the appropriate use of the acceptable ranges for multi-year A/R ratio target values in irrigated lands regulatory programs statewide.[112]

The Central Coast Water Board understands this direction to counsel caution in use of AR data as a limit, *i.e.*, a "regulatory tool," in the near term, as the water boards and dischargers gain more experience with the collection and use of the AR data.

Although the ESJ Order anticipates convening an expert panel to review the use of AR data, the expert panel process is not built into the precedential requirements of the ESJ Order. To date, the State Water Board has not convened an expert panel and has not undertaken a process to determine if AR data may serve as a "regulatory tool."

Some of the work in studying AR data and evaluating its potential as a regulatory tool for agricultural discharges to groundwater is proceeding at the regional water board level through the work of the Central Valley Water Board, in collaboration with that region's agricultural coalitions, in developing N removal coefficients, receiving and

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[110] General Order, Attachment A, at p. 89, paragraph 270.f-g, AR0172.

[111] The Central Coast Water Board does not dispute the agricultural petitioners' point that the reference to the A/R ratio target in this passage is inclusive of other equations based on the AR data, including the A-R equation used in the General Order.

[112] State Water Board Order WQ 2018-0002, at p. 74, AR33578.

analyzing AR data, and in developing township-level groundwater protection formulas, values, and targets. The Central Valley Water Board was directed by the ESJ Order to report to the State Water Board periodically on, among other items, progress on "developing acceptable ranges for multi-year A/R target values" and progress on groundwater protection targets.[113] Additionally, one of the issues identified by the State Water Board as a short-term challenge in using the AR data as a regulatory tool was that there was insufficient data to calculate the R value for most crops.[114] That work is now well-underway. The Central Valley Water Board received a UC Cooperative Extension (UCCE) study (Geisseler Report), funded by a grant from the California Department of Food and Agriculture Fertilizer Research and Education Program (CDFA-FREP), and updated in March 2021, providing values for the N concentrations in most commonly harvested crops.[115] Published nitrogen removal conversion coefficients currently exist for an estimated 93 percent of crop-acres in the central coast region.[116] The crops that comprise the 93 percent of crop-acres are included in table MRP-4 of Attachment B of the General Order.[117] Central Coast Water Board staff estimate that by 2023, nitrogen removal conversion coefficients for 97% of crop-acres in the region will exist.[118] Like the Central Valley Water Board, the Central Coast Water Board has been coordinating with CDFA-FREP and UCCE on determination of additional coefficients for regional crops, as well as the establishment of standard protocols for growers to develop crop removal coefficients for less widely-grown crops.[119] This work is anticipated to be completed in the 2022-23 time frame.

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[113] *Id.*

[114] *Id.*, at p. 41, AR33545.

[115] Geisseler, D. (2016). Nitrogen concentrations in harvested plant parts – A literature overview. University of California Cooperative Extension. Written with support from Kings River Watershed Coalition. University of California, Davis. Department of Land, Air and Water Resources, AR21847–AR22003 (Geisseler Report). This report was updated in March 2021 and is available at http://geisseler.ucdavis.edu/Geisseler_Report_U1_2021_03_31.pdf (as of October 1, 2021).

[116] Video recording, September 24, 2020 Board Meeting, at 06:26:00, AR10230 (CCWB staff discussing crop coefficients); Staff Presentation, part 1, September 10, 11, 23, 24, 25, 2020; October 22-23, 2020; December 9-10, 2020; and January 7-8, 2021 Central Coast Water Board Meetings, at p. 25, AR9930.

[117] General Order, Attachment B, Table MRP-4, at p. 36, AR0420.

[118] Staff Presentation, part 1, September 10, 11, 23, 24, 25, 2020; October 22-23, 2020; December 9-10, 2020; and January 7-8, 2021 Central Coast Water Board Meetings, at p. 25, AR9930.

[119] The conversion coefficients established in the General Order were developed using information from (1) the Geisseler Report*, supra,* (2) the California Crop Fertilizer Guidelines, *available at* https://www.cdfa.ca.gov/is/ffldrs/frep/FertilizationGuidelines/N_Uptake.html (as of October 1, 2021) (*see also, generally*, AR28606–AR28794) and (3) information provided to Central Coast Water Board staff by UC Cooperative Extension researchers at the March 2019 board meeting (Smith and Cahn, 2019, Dry Matter and Nitrogen Content of Various Vegetables Produced on the Central Coast, AR25719–AR25721). (General Order, Attachment A, at p. 155, paragraph 53, AR0238). "The California Department of Food and Agriculture's (CDFA) Fertilizer Research and Education Program (FREP) released a Special Request for Proposals to seek high-quality research that determines nitrogen accumulation and removal coefficients for specific crops grown in the central coast region (including Santa Cruz, Santa Clara, San

Relying on this expanding regional experience and knowledge in receiving and analyzing AR data, but, at the same time, recognizing the precedential direction and lack of more recent guidance from the State Water Board, the Central Coast Water Board has proceeded with caution in imposing nitrogen discharge limits. As explained above, the General Order imposes the limits only in the limited context of Dischargers not participating in the third-party alternative compliance pathway, imposes the first limit six years into the permit term and only at a level that two thirds of Dischargers are currently meeting, and provides for over two decades to meet the final limits. The first nitrogen discharge limit deadline of December 2027 represents a date a decade after adoption of the ESJ Order, allowing significant time for "data [to be] collected" and "research [to be] conducted" as anticipated by the ESJ Order. And the General Order specifically acknowledges that the State Water Board may provide additional direction prior to 2027 and commits to reevaluating the first limit, whether or not the State Water Board provides direction, prior to the limit becoming effective.

D. Central Coast Water Board's Unique Regional Experience Supporting Imposition of Nitrogen Discharge Limits

Among the water boards, the Central Coast Water Board is uniquely situated to develop nitrogen discharge limits.

First, The Central Coast Water Board has multiple years of experience in receiving and analyzing nitrogen application data. The Central Coast Water Board has received nitrogen application data through the TNA reporting requirement since 2014. In the 2014, 2015, and 2016 reporting years, approximately 700 ranches representing 117,000 acres (28 percent of enrolled acres) submitted TNA reports. The reporting requirement was expanded under Agricultural Order 3.0 and about 1,700 ranches representing 230,000 acres (55 percent of enrolled acres) have been required to report since 2017. The submitted data are periodically analyzed to determine if there have been significant changes in application rates or estimated loading rates.[120] While there have been changes in the median rates from one year to the next, the Central Coast Water Board has found that overall there have not been significant changes in application rates to the top six crops,[121] representing 75% of all crops reported each year, even considering the expansion of the reporting requirement beginning in 2017.[122] Significantly, analysis of

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Benito, San Luis Obispo, Santa Barbara and Ventura Counties). This special request focused on 21 priority crops identified by the Central Coast Water Board as requiring additional research to determine or improve nitrogen removal coefficients appropriate to cropping systems in the central coast region. Full proposals were due January 31, 2020, for projects that will begin in July 2020." *Id.*, Attachment A, at p. 155, paragraph 54, AR0238.

[120] General Order, Attachment A, at p. 143, paragraph 17, AR0226.

[121] The majority of crops for which the Central Coast Water Board has received nitrogen application information include the following six crops, in descending order of prevalence, lettuce, broccoli, spinach, cauliflower, celery, and, strawberries.

[122] General Order, Attachment A, at p. 143, paragraph 18, AR0226.

the application data over the years has also demonstrated that two thirds of dischargers are applying nitrogen to fields at levels that, if evaluated through the A-R framework, would constitute compliance with the initial nitrogen discharge limit of the General Order.[123] The Central Coast Water Board is thus in the unique situation of having multiple years of data indicating that it is generally both possible and reasonable for dischargers to comply with the A-R limits established for 2027.

Second, the Central Coast Water Board has long-standing experience in receiving and analyzing groundwater monitoring data. The Board has received irrigation well monitoring and domestic well sampling and reporting for nitrate since 2012. The data documents widespread and severe nitrate contamination. The Central Coast Water Board published a staff report on groundwater quality conditions in May 2018 titled Groundwater Quality Conditions and Agricultural Discharges in the Central Coast Region.[124] Groundwater quality tables included in the General Order were updated from the May 2018 report to incorporate additional groundwater monitoring data received in 2018 and 2019. Information from these tables is incorporated into findings in Section C.1. A review of the most recent nitrate concentration data indicates that a significant number of groundwater basins in the central coast region are experiencing significant nitrate contamination, particularly in agricultural areas. The data also indicate increasing concentrations in some sub-basins where water quality is already degraded by nitrate, as well as in some sub-basins that historically have had higher quality groundwater.[125]

Finally, the central coast region is unique in its reliance on its groundwater aquifers. In the central coast region, nearly all agricultural, municipal, industrial, and domestic water supply comes from groundwater. Significantly, groundwater supplies approximately 90 percent of the drinking water in the central coast region, such that the presence of nitrate in groundwater is a critical public health threat.[126]

The General Order thus relies on the Central Coast Water Board's long-standing and extensive experience with receiving and analyzing nitrogen data to address an issue that is particularly critical for its region by developing nitrogen discharge limits (and targets). The basis for the values of the limits are further explained in detail in the findings.[127]

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[123] *Id.*, at p. 148, paragraph 25, AR0231.

[124] *Id.*, at p. 31, paragraph 106, AR0114; Central Coast Water Board Groundwater Quality Conditions and Agricultural Discharges in the Central Coast Region, Staff Report (Item No. 8) (May 2018), AR18965–AR19004.

[125] General Order, Attachment A, at pp. 222–234, paragraphs 2–3, AR0305–AR0317.

[126] *Id.*, at p. 2, paragraph 8, AR0085; DWR Bulletin 118 (2020), at pp. 2-6 and 2-7, AR35724 and AR35725.

[127] General Order, Attachment A, at pp. 143–163, paragraphs 17–81, AR0226–AR0246.

The State Water Board has generally acknowledged that its direction in a precedential order may not apply or may be modified as applied to a regional water board action based on factual differences in the matter before the regional water board and the State Water Board.

> Precedential decisions and orders provide guidance for later decisions and orders. The State Water Board and the nine Regional Water Quality Control Boards (Regional Water Boards) ordinarily will follow State Water Board precedents, or provide a reasoned analysis for not doing so. Administrative precedents do not have the same binding effect as statutes or administrative regulations, however. The State Water Board may refine, reformulate or even reverse its precedents on a case-by-case basis in light of new insights or changed circumstances. A Regional Water Board cannot reverse a State Water Board precedent, but a Regional Water Board may distinguish a State Water Board precedent. A Regional Water Board may conclude that based on differences between the facts before the Regional Water Board and the facts that were the basis for the State Water Board precedent, a State Water Board precedent either does not apply or should be modified as applied in the proceeding before the Regional Water Board.[128]

Here, the Central Coast Water Board acknowledged that the State Water Board direction applied to the General Order, but, based on the facts before it, and based on its unique and long-standing experience with nitrogen data, found it appropriate to impose nitrogen discharge limits in a targeted, narrow manner, and with a commitment to reevaluation of those limits prior to the limits taking effect.

E. Responses to Additional Specific Contentions

1. Petitioners Contend that the Three A-R Compliance Pathways are Inappropriate as Nitrogen Discharge Limits Because They are Complicated and Inexact

As the Central Coast Water Board understands the agricultural petitioners' general contentions above, petitioners object to use of the AR data as a limit in any form, but not specifically to use of the multi cropping cycle A-R difference in lieu of the multi-year A/R ratio. To the extent the agricultural petitioners do object to the use of the multiple

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[128] *See* State Water Board "Resolutions, Orders & Decisions" web page https://www.waterboards.ca.gov/board_decisions/adopted_orders/ (as of September 20, 2021); *see also*, *e.g.*, State Water Board Order WQ 2015-0075, p. 51 ("We expect the regional water boards to follow these principles unless a regional water board makes a specific showing that application of a given principle is not appropriate for region-specific or permit-specific reasons.")

cropping cycle A-R, rather than the multi-year A/R, as the appropriate expression of nitrogen discharge, the General Order explains in detail why a multiple cropping cycle A-R value was adopted as the appropriate base nitrogen discharge equation rather than the multi-year A/R ratio.[129]

The use of the multiple cropping cycle A-R formula is not precluded by the ESJ Order. The ESJ Order acknowledged the usefulness of the A-R formula, used in conjunction with A/R:

> Although not considered by the Agricultural Expert Panel, we find that the multiyear A/R ratio will be rendered more informative if additionally paired with an A-R difference value (pounds of nitrogen applied minus pounds of nitrogen removed) to further tease out the magnitude of any potential nitrogen over-application, especially in cases where use of only the multi-year A/R ratio may mask significant quantities of nitrogen left in the field. Further, the A-R difference, whether considered at the scale of a field, a township, or an alternative geographic unit, provides useful information on the magnitude of the amount of nitrogen left in the soil with potential to reach groundwater. This data in turn allow the Third Party and regional water board to better focus follow-up and management practice implementation as well as research and modeling on groundwater loading.[130]

Pursuant to the General Order, and consistent with the ESJ Order, A and R values must continue to be reported in the INMPs, and Central Coast Water Board staff will determine the A/R value for all Dischargers as a check against the A-R values. [131] With regard to relying on a multiple cropping cycle value instead of multi-year value, the ESJ Order stated:

> The Agricultural Expert Panel report recommends a "multi-year" A/R approach, and we are here extending that approach's concept to use the term "multi-cropping-cycle" as an alternate description that would apply to areas where multiple crop cycles are grown in the same location within a single growing season. We believe the Expert Panel's main

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[129] General Order, Attachment A, at pp. 80–81, paragraph 260, AR0163-0164; *id.* at pp. 82–84, paragraphs 262–263, AR0165–AR0167; *id.*, at pp. 149–156, paragraphs 29–59, AR0232–AR0239. A/R is a unitless ratio that does not provide any insights into how much loading may be occurring, whereas A-R is a quantitative pollutant mass-based measurement that is a reasonable proxy to estimate surplus nitrogen applications available for discharge.

[130] State Water Board Order WQ 2018-0002, at p. 39, AR33543

[131] General Order, Attachment A, at pp. 80–81, paragraph 260.c-d, AR0163–AR0164.

> concept was that it takes multiple cycles of growing crops in order to cancel out appropriate variations in nitrogen application and removal that happen between individual cycles. The Expert Panel expressed this approach as "multi-year" since it is typical that only one crop cycle happens within a year. However, there are instances within California agriculture where multiple crops with short growing periods will be grown in the same location within the span of a single year, and therefore the same variation canceling effect can be seen in a period shorter than a multiyear period. The regional water boards will need to use their discretion in how they implement the multi-cropping cycle period to ensure that it is appropriate to the circumstances.[132]

With a multiple cropping cycle A-R value as the foundation, the General Order provides three pathways for Dischargers to comply with the nitrogen discharge targets and limits: the standard A-R pathway that accounts for all nitrogen applied and removed, a second pathway that incentivizes the use of irrigation water nitrogen by requiring Dischargers only to show that their removal meets or exceeds the amount of fertilizer and compost nitrogen applied, without including the nitrogen applied through irrigation water, and a third pathway that also incentivizes the use of irrigation water nitrogen by not including it in the compliance calculation.[133] During the development and as part of the public process for the General Order, the Central Coast Water Board solicited public comments on regulatory requirements for groundwater protection and also solicited responses from experts and stakeholders to questions such as "what other quantifiable milestones do you recommend" in lieu of using the A-R formulas for nitrogen discharge and "what alternative options do you recommend" for groundwater protection.[134] The Central Coast Water Board did not receive responses or recommendations from experts or stakeholders on alternative formulas that the Board may use for nitrogen discharge and groundwater protection.[135] Therefore, the Central Coast Water Board incorporated the A-R formulas as part of the General Order for groundwater protection.

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[132] State Water Board Order WQ 2018-0002, p. 38, fn. 108, AR33542.

[133] The A-R compliance pathway formulas include several quantifiable variables defined at pages 24 and 25 of the General Order (AR0027–AR0028). The Central Coast Water Board has been receiving A_{FER}, A_{COMP}, A_{ORG}, and A_{IRR} information from dischargers since 2014, as part of the total nitrogen applied reporting required under Order No. R3-2012-0011 (2012 Agricultural Order) and Order No. R3-2017-0002 (2017 Agricultural Order).

[134] Notice of Written Public Comment Period for Ag Order 4.0 Conceptual Regulatory Requirement Options, November 19, 2018, AR5028–AR5041; Revised Notice of Written Public Comment Period for Ag Order 4.0 Conceptual Regulatory Requirement Options, December 18, 2018, AR5063–AR5076.

[135] Item 3: Staff Report, Attachment 1, Summary of Public Comments and Assessment of Alternative Proposals, March 20, 2019, AR5868–AR5874.

Earlier in the proceedings, the Central Coast Water Board proposed less complex A-R formulas[136] than the formulas ultimately included in the General Order.[137] These formulas accounted for nitrogen applied from fertilizer, compost, and irrigation water and also accounted for nitrogen removed from the field through harvest, sequestration in woody materials, quantifiable treatment methods, and any other methods not previously quantified. During the public process, Dischargers requested modifications to the proposed A-R formulas to include additional discounts for organic fertilizer applications and additional credits for the use of nitrogen scavenging cover crops, nitrogen scavenging high carbon amendments, and high carbon woody materials applied as mulch.[138] These requested discounts and credits were incorporated as part of the A-R formulas and do make the formulas appear to be more complicated. However, Dischargers that do not apply compost, organic fertilizers, or implement nitrogen scavenging management practices can disregard these additional elements of the A-R formulas. Overall, the nitrogen applied discounts were incorporated as part of the A-R formulas to encourage the use of compost and organic fertilizers to improve soil health, nutrient and carbon sequestration, and water holding capacity consistent with the state's Healthy Soils Initiative. Likewise, the nitrogen removed credits were incorporated as part of the A-R formulas to encourage the implementation of best management practices that reduce nitrogen leaching in the wet/rainy season and also improve soil health.[139]

The Central Coast Water Board recognizes that the A-R formulas for groundwater protection are necessarily inexact and may need to be refined over time. For this reason, the General Order includes built-in opportunities for reevaluation and modifications to the A-R formulas, as well as opportunities for the consideration of other future regulatory methods.[140] The current discharge formulas are based on the best data currently available; the additional reported nitrogen removal and irrigation water information, as well as experience gained in implementing the permit, will allow the

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[136] Draft Agricultural Order, at pp. 25–27, paragraphs 4–10, AR6897–AR6899.

[137] General Order, at pp. 23–27, paragraphs 10–18, AR0026–AR0030.

[138] True Organic Farming, Written Comments Received January 21, 2019, AR5671–AR5673. Item 3: Presentation from Rio Farms, Jocelyn Bridson; U.C. Cooperative Extension, Monterey County, Richard Smith; Ramy Colfer, True Organics, March 20, 2019, AR5946–AR5983; True Organic Products, Written Comments Received June 19, 2020, AR7659–AR8004; True Organic Products, Written Comments Received February 25, 2021, AR11656–AR11657; University of California Cooperative Extension Monterey County Agriculture and Natural Resources, Richard Smith, Written Comments Received June 22, 2020, AR9484–AR9488; Item 3: Presentation from Richard Smith, University of California Cooperative Extension, April 14, 2021, AR16690–AR16698; Item 3: Presentation from Eric Brennan, USDA, Agricultural Research Service, April 14, 2021, AR16699–AR16708.

[139] General Order, at pp. 25-26, paragraphs 12, 13, and 16, AR0028-AR0029; General Order, Attachment A, at pp. 152-154, paragraph 39-59, AR0235-0237; General Order, Attachment A, at pp. 151–154, paragraphs 39–50, AR0234–AR0237.

[140] General Order, at pp. 148–149, paragraph 27, AR0231–AR0232; *see also id.*, at p. 15, paragraph 32, AR0018, at p. 29, paragraph 25, AR0032; General Order, Attachment A, at pp. 88–89, paragraph 270, AR0171–AR0172.

Central Coast Water Board to revisit discharge limits in the future and adjust or replace the formulas and limits.

2. Petitioners Contend that the Use of A-R as a Nitrogen Discharge Limit is Not Scientifically Supportable Based on Expert Testimony During the ESJ Order Proceedings

The agricultural petitioners' contention mischaracterizes the testimony before the State Water Board. In support of this contention, the agricultural petitioners first cite to testimony during the ESJ proceedings by Dr. Thomas Harter. The cited testimony by Dr. Harter reads as follows:

> [T]he public data submitted to the Regional Water Board, if those are submitted, aggregated to the township level and include the total nitrogen applied per crop and total nitrogen removed by crop, the A over R ratio is completely sufficient to do an assessment of how much crops contribute relative to each other, to nitrate and groundwater, how farmers are dong relative to each other, and to give us a tool to do trend assessment and larger regional establishments.
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> . . . We can do all kinds of things, even if they're reported at the township level. We can do Central Valley [wide] establishments. We can do temporal establishments. We can look at distributions. We can look at long-term trends . . . .[141]

Dr. Harter's testimony is not a statement that a nitrogen discharge limit is scientifically unsupportable, as the agricultural petitioners assert, but rather a position that receiving A and R values aggregated at the township level is scientifically sufficient for purposes of determining trends in nitrate discharge to groundwater with regard to factors such as crops grown and management practices implemented. This type of trend analysis was the primary focus of his testimony. While Dr. Harter went on to state that the Agricultural Expert Panel convened by the State Water Board found that determining compliance at the field level was subject to "potential accuracy issues," his brief reference to this statement in the Panel's 2014 report should not be mischaracterized as a statement that the AR data could not, with more than a decade of additional data collection and implementation experience, support a field-level limit by 2027.

The agricultural petitioners also cite to testimony by agricultural experts Stuart Styles and Joel Kimmelshue. The cited testimony concerns the unavailability at the time (2016) of crop coefficients for calculation of R values and the difficulty of relying on A and R

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[141] Agricultural Association Partners, Written Comments Received June 22, 2020, Exhibit 8, Attachment A, Transcript of May 17, 2016 State Water Board Workshop on the Draft ESJ Order, AR8490–AR8491.

values over a single year.[142] On the first point, the above responses have laid out the work that has since been undertaken to identify R coefficients by crop. On the second point, as already stated, the ESJ Order explicitly provided that determining the AR values for multiple crop cycles over one year is an appropriate substitute for calculating multi-year AR values.

In fact, even after receiving testimony from experts, the State Water Board proceeded to require reporting of the AR data at the field-level and did not rule out that field-level data may be used as a regulatory tool in the future.

3. Petitioners Contend that the Use of A-R Nitrogen Discharge Limits Will Eliminate the Economic Viability of Many Crops in the Central Coast

The agricultural petitioners assert that limiting the amount of nitrogen that can be applied per acre per ranch per year would eliminate the economic viability of many crops grown in multiple cropping cycles, which constitute a key sector of agriculture in the central coast region. For this proposition, petitioners rely primarily on a technical report prepared by petitioners' consultant that describes an example analysis of potential impacts of nitrogen discharge limits on lettuce farming in Monterey County (Monterey County Lettuce Example).[143]

The Central Coast Water Board received the Monterey County Lettuce Example as part of agricultural petitioners' June 2020 comments on the Draft Agricultural Order. Comments received on the Draft Agricultural Order, including the Monterey County Lettuce Example, informed the Regional Board's decision to incorporate a process for a third-party program into the General Order that would allow dischargers to work with a third party in lieu of complying with individual discharge limits. Nevertheless, the Central Coast Water Board does not agree that the Monterey County Lettuce Example accurately predicts the economic impact of nitrogen discharge limits for the central coast region's agricultural industry, even for dischargers not enrolled in a third-party program, as discussed in detail in subsection E of the response to Contention GS-12. Additionally, the example captures a point in time, but the Central Coast Water Board anticipates technical innovation and improvements and advances in agricultural practices to be spurred by the implementation of the General Order.[144]

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[142] *Id.*, AR8522–AR8526.

[143] Technical Memorandum, ERA Economics (June 19, 2020) AR8331–AR8344.

[144] *See* FEIR, vol. 3, at p. 2-54, AR1583 (Master Response 2.10.2) (refencing Comment Letter BN, AR1982–AR2175, and Comments BN-368 to BN-415, AR2089–AR2102 and stating "[t]he example economic analysis provided by commenters . . . which considers the economic impacts of complying with the nitrogen discharge limits on iceberg lettuce in Monterey County, is misleading in that it cherry-picks one element of Agricultural Order 4.0 (the lower nitrogen discharge limits that would go into effect in years after the Order adoption) to exaggerate economic impacts . . . [and appeared] to disregard potential ways that the growers could adapt their practices to reduce nitrogen discharges)); *see also* Response to Comments, RAO, at pp. 52, AR16578.

The Monterey County Lettuce Example looks at the impact on lettuce growers at the 200 lbs per acre per year, 100 lbs per acre per year, and 50 pounds per acre per year levels. Under the General Order, individual dischargers not participating in the third-party program will have to meet these limits in 2031 and 2051 respectively. As already noted, two thirds of growers are currently meeting the 2027 limit of 300 pounds per acre per year. Over one third are meeting the 2031 limit of 200 pounds per acre per year.[145] The Central Coast Water Board nevertheless recognizes that ranches with multiple cropping cycles, such as lettuce growers, may have unique challenges in meeting the limits. That is why the Central Coast Water Board provided a lengthy time schedule to meet the limits for individual dischargers. That is also why the Central Coast Water Board incorporated the 3P-ACP option that allows a group of Dischargers to meet groundwater protection targets collectively.

The Central Coast Water Board's exercise of policy discretion in setting the limits was reasonable, notwithstanding the challenges some Dischargers may face in meeting the limits. The Central Coast Water Board set the limits at levels and in accordance with timelines that it believed would accommodate the developments of improved farming practices and technological innovation — which is ultimately key in addressing water quality issues attributable to agricultural discharges — without being overly burdensome on the subset of Dischargers currently unable to meet those limits. At the same time, the General Order provides for reevaluation of the limits, as needed. And, again, dischargers requiring assistance to meet any limit have the option of enrolling instead in the 3P-ACP and taking advantage of the outreach and training provided by the third-party, as well as complying with individual and collective targets, instead of limits.

Finally, market driven factors in the central coast region have resulted in significant historical shifts in cropping patterns and to date, Dischargers have effectively responded to such shifts with innovation. Factors other than the General Order, such as climate change, or changing markets, will likely result in significant shifts in cropping patterns in the future. A changing regulatory regime is thus one of many factors that will determine the evolution of agriculture in the central coast region.

Contention GS-6: Requirements for impermeable surfaces are overly broad. (GS Petition, pp. 37-40)

Response GS-6: The Central Coast Water Board disagrees with this contention. The agricultural petitioners argue that the General Order requirements for fields with impermeable surfaces are too broad to be reasonably effective; are infeasible to implement, particularly for small-operation berry farmers; are improperly based on Monterey County Resources Conservation District guidance that was not intended for regulatory purposes; and are not tied to an actual threat to water quality.
The General Order requires ranches with either (1) 50 to 100 percent of fields covered by impermeable surfaces or (2) greater than or equal to 22,500 square feet (0.5 acre) of

[145] General Order, at pp. 148, Table A.C.1-4, Percent of Ranches Achieving Discharge Targets and Limits, AR0231.

impermeable surfaces to manage stormwater discharge duration, rate, and volume.[146] Specifically, discharges from such ranches are subject to stormwater discharge and volume requirements and Dischargers must document in the Farm Plan the management practices implemented to mitigate for stormwater runoff from impermeable surfaces.[147] These requirements are derived from the Central Coast Water Board's Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast Region (Post-Construction Stormwater Management Requirements or PCRs).[148] Although Post-Construction Stormwater Management Requirements were adopted to apply to new development and redevelopment projects, they are relevant to stormwater discharges from irrigated agricultural development in the central coast region because "impermeable surfaces decrease field area available for infiltration and evapotranspiration and result in a greater volume and velocity of stormwater runoff, erosion, and sediment discharges" similar to the effect of new development or redevelopment projects. [149]

In particular, the General Order requirement that "[s]tormwater discharge intensity from fields with impermeable surfaces must not exceed the stormwater discharge intensity from equivalent permeable field area for any storm event up to and including the 10-year storm event" is derived from Performance Requirement No. 4 in the PCR.[150] Performance Requirement No. 4 also identifies impervious surfaces equal to or greater than 22,500 square feet as the threshold for this PCR requirement.[151] Part 2, Section C.3 of the General Order uses 22,500 square feet, or .5 acre, as the threshold for mandating the impermeable surfaces requirements. The General Order requirement that "stormwater discharge volume from fields with impermeable surfaces must not exceed the stormwater discharge volume from equivalent permeable field area for any storm event up to and including the 95th percentile, 24-hour storm event" is derived

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[146] General Order, at p. 37, paragraph 11, AR0040. The General Order defines "impermeable surfaces" as "Plastic-covered surfaces that do not allow fluid to pass through, including polyethylene mulch and hoop houses. For the purposes of this Order, impermeable surface does not refer to relatively impermeable soils." General Order, Attachment B, at p. 14, AR0470.

[147] General Order, at p. 37, paragraph 11, AR0040.

[148] General Order, Attachment A, at p. 200, paragraph 142, AR0283.

[149] *Id.* The Central Coast Water Board adopted the Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast Region under the authority of the State Water Board Phase II Municipal General Permit to allow for a watershed-process approach to manage post-construction stormwater runoff for certain small MS4s. Resolution No. R3-2013-0032, AR36023–AR36031; State Water Board Order 2013-0001-DWQ as amended by Orders WQ 2015-0133-EXEC, WQ 2018-0001-EXEC, and WQ 2018-0007-EXEC (unofficial draft), Section E.12.k.

[150] *Compare* General Order, at p. 37, paragraph 11.a, AR0040 *with* Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast Region (PCR), section B.5)a)i), at p. 10, AR18909.

[151] PCR, section B.5)a), at p. 10, AR18909.

from Performance Requirement No. 3 in the PCR.[152] As explained in the General Order findings, "[a]gricultural use of impermeable surfaces predominates in areas of the central coast region where the PCR requires mitigation of runoff volumes for the 95th percentile, 24-hour storm and mitigation of peak runoff intensity for the 2 through 10-year storm[,]" and using these PCR performance requirements as the basis for the impermeable surfaces requirements is reasonable.[153]

The General Order findings further support the impermeable surfaces requirements and document: (1) that impermeable surfaces cause increased surface runoff, erosion and sediment and pesticide discharges, (2) significant increases in the use of impermeable surfaces and crops grown that use plastic mulch as a standard practice (e.g., strawberries), and (3) a significant number of complaints associated with agricultural runoff, erosion and sedimentation. Additional findings document widespread and elevated turbidity and sedimentation/siltation exceedances in surface water in agricultural areas of the central coast.[154] Combined, these General Order findings clearly make a nexus between impermeable surfaces and a threat to water quality warranting the requirements in question.

The agricultural petitioners also challenge the Central Coast Water Board's decision not to incorporate into the General Order the California Strawberry Commission's proposed alternative requirements. The Central Coast Water Board requested the methodology and justification for the California Strawberry Commission's recommendations for impermeable surface requirements several times following the June 22, 2020, submittal of their comments. The California Strawberry Commission did not submit this information to the Central Coast Water Board.[155] The Central Coast Water Board could not consider the Strawberry Commission's recommendations without any supporting documentation. However, changes were made to the Draft Agricultural Order impermeable surfaces requirements in response to the California Strawberry Commission's comments and Central Coast Water Board direction. In particular, the requirement that all Dischargers with impermeable surfaces on slopes equal to or greater than 5 percent during the wet season must have sediment and erosion control plan developed and certified by a qualified professional was removed.[156] Although the

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[152] *Compare* General Order, at p. 37, paragraph 11.b, AR0040 *with* PCR, sections B.4)c)i)1) and B.4)c)ii)1), at p. 6, AR18905.

[153] General Order, Attachment A, at p. 200, paragraph 142, AR0283.

[154] *Id.* at 195–197, paragraphs 115–127, AR0278–AR0280.

[155] *See generally* Email thread between Eric Lauritzen, California Strawberry Commission and Jamie Pratt, CCWB, Subject: Comment Letter – Ag Order 4.0, December 12, 2020, AR29624.

[156] Revised Draft Agricultural Order, track changes, at p. 74, AR10437 (reflecting deletion of paragraph 9); *compare* Draft Agricultural Order, at p. 37, AR6909 (impermeable surfaces subsection, paragraph 9) *with* Revised Draft Agricultural Order, at p. 34–35, AR10321–AR10322 (impermeable surfaces subsection); *see also* FEIR, at p. 2-43, AR1572 (Master Response to Comment 2.7.5) ("Based on comments received, [the Revised Draft Agricultural Order] no longer includes a percent slope requirement related to impermeable surfaces.").

Central Coast Water Board acknowledges that the impermeable surfaces requirements may be difficult or expensive for small-operation Dischargers to implement because they may be required to hire a professional, the minimum acreage requirement is warranted because of the potential cumulative impacts associated with contiguous strawberry growing operations in agricultural areas suitable for growing strawberries.

Lastly, the agricultural petitioners misconstrue the reference in the Findings to the Monterey County Resources Conservation District 2014 Hillslope Farming Runoff Management Practices Guide on page 198, paragraph 136 of Attachment A. The Finding illustrates the water quality impacts from impermeable surfaces.[157] It was not used as a recommendation or basis for requirements in the General Order.

Contention GS-7: Pesticide surface receiving water limits are improper because they are not based on adopted numeric water quality objectives. (GS Petition, pp. 40-41)

Response GS-7: The Central Coast Water Board disagrees with the contention that the surface receiving water limits for pesticides must be based on numeric water quality objectives. The Responses to Comments explain that the receiving water limits for pesticides and toxicity that are not based on total maximum daily loads are derived from the narrative water quality objectives in the Basin Plan and that contrary to the contention, a statewide policy is not required for the Central Coast Water Board to interpret a narrative water quality objective to establish a numeric receiving water limit in waste discharge requirements.[158] Moreover, the Central Coast Water Board took the factors in Water Code section 13241 into account when adopting the General Order, which includes the surface receiving water limits for pesticides and toxicity.[159]

When adopting waste discharge requirements, a regional board must implement the Basin Plan, which includes narrative water quality objectives.[160] Unlike permits issued under the National Discharge Pollutant Elimination System (NPDES) program where federal regulations govern the establishment of numeric effluent limitations when they are based on interpretation of narrative water quality standards,[161] establishment of numeric limits based on narrative water quality objectives in non-NPDES permits is at the permitting authority's discretion and not subject to a policy if a governing policy has not been adopted.

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[157] General Order, Attachment A, at p. 198, paragraph 136, AR0281.

[158] FEIR, vol. 1, at p. 3-596–3-597, AR2181–AR2182 (Response to Comment BN-46).

[159] *E.g.*, General Order, Attachment A, at pp. 5–6, 63, AR0088–AR0089, AR0146 (identifying and discussing protection of beneficial uses); *id.*, at pp. 2–4, AR0085–AR0087 (discussing environmental characteristics); *id.* at 13–16, AR0096–AR0099 (considering economic factors); *id.*, at p. 64, AR0147 (discussing water quality conditions that could be achieved by implementing management practices).

[160] Wat. Code § 13263(a).

[161] 40 C.F.R. § 122.44(d)(1)(vi).

The General Order's Findings identify the relevant water quality objectives for pesticides and toxicity as set forth in the Basin Plan.[162] The relevant water quality objective for toxicity requires that "[a]ll waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in human, plant, animal, or aquatic life."[163] The Basin Plan general objective for pesticides states: "No individual pesticide or combination of pesticides shall reach concentrations that adversely affect beneficial uses. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life."[164]
The General Order includes the numeric limits in Table C.3-5 for pesticides and toxicity because narrative water quality objectives for toxicity and pesticides are not being met in central coast surface waters and sampling in the region's waterbodies since 2017 indicates significant toxicity to survival of *hyallella azeteca*, *chironomus dilutus,* and *ceriodaphnia dubia*.[165] When water quality objectives are narrative, rather than numerical, it is an appropriate exercise of the permitting agency's best professional judgment to use existing scientific literature and information to establish numeric limits. In establishing the pesticides and toxicity numeric surface receiving water limits in Table C.3-5, the Central Coast Water Board prioritized pesticides or combinations of pesticides that are used largely in intensive agricultural areas throughout the central coast region to control pests that damage crops, that have been detected in central coast waterbodies throughout predominantly agricultural areas at a frequency or at concentrations that may adversely affect aquatic life, and that may be associated with toxicity problems in surface waterbodies.[166]

The General Order implements the narrative water quality objectives as surface receiving water limits for pesticides and toxicity based on benchmarks, criteria and guidelines developed by U.S. EPA and other researchers that are protective of aquatic life and address acute risk (short-term effects such as survival and growth) and chronic risk (longer term effects such as reproduction). The U.S. EPA aquatic life benchmarks and other literature that form the basis for the limits are listed in Table A.C.3-2 of General Order, Attachment A and provide values below which pesticides are not expected to represent a risk of concern for aquatic life.[167] The surface water receiving limits appropriately implement the narrative water quality objectives for pesticides and toxicity.

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[162] General Order, Attachment A, at p. 178, paragraphs 49 & 50, AR0261; *see also* Water Quality Control Plan for the Central Coastal Basin (Basin Plan), at p. 31, AR34091 (toxicity WQO); *id.* at p. 32, AR34092 (pesticides WQO).

[163] Basin Plan, at p. 31, AR34091.

[164] *Id.*, at p. 32, AR34092.

[165] General Order, Attachment A, at p. 179, paragraph 54, AR0262; *id*. at 188–189, AR0271–AR0272.

[166] *Id.*, at pp. 179–180, Table A.C.3-1, AR0262–AR0263; *id.*, at pp. 179–189, AR0263–AR0272.

[167] General Order, Attachment A, at pp. 189–193, Table A.C.3-2, AR0273–AR0276.

Contention GS-8: Requirements to conduct ranch level groundwater or surface discharge monitoring and reporting as a consequence of exceeding limits is inappropriate. (GS Petition, pp. 41-42)

Response GS-8: The Central Coast Water Board disagrees with this contention. The agricultural petitioners argue that ranch-level monitoring and reporting requirements violate Water Code section 13267 because doing so is impractical and costly, and the usefulness of such information is questionable considering the relative impact, or lack thereof, that one farm would have on receiving water quality.

As discussed in response to Contention GS-4, the monitoring and reporting requirements in the General Order are governed by Water Code section 13267. Under Water Code section 13267, when a regional board investigates the quality of the waters of the state with the region subject to the regional board's authority, it may require technical or monitoring program reports from "any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region."[168] "The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report, and the benefits to be obtained from the reports."[169]

Under the General Order, some Dischargers could be required to conduct ranch-level discharge monitoring and reporting if they have significant and repeated violations of General Order targets and limits or are in areas where water quality data is showing significant exceedances of water quality objectives.[170] Dischargers who are in good standing with the 3P-ACP are exempt from ranch-level groundwater monitoring.[171] Prior to the compliance dates for the surface receiving water limits, Dischargers participating in a third-party program to develop and implement a follow-up surface receiving water implementation workplan are exempt from ranch-level surface water monitoring.[172] Ranch-level discharge monitoring and reporting is directly connected with protecting water quality and determining the cause of exceedances of water quality objectives. Ranch-level monitoring and reporting, if required, is intended to help individual Dischargers more definitively evaluate ranch-level discharges and corrective measures (e.g., new or modified management practices) to come into compliance with targets or limits. Ranch-level monitoring and reporting will also demonstrate if corrective actions

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[168] Wat. Code § 13267, subd. (a), (b)(1); *see also Sweeney v. California Regional Water Quality Control Bd., San Francisco Bay Region* (2021) 61 Cal. App. 5th 1093, 1114–16, as modified on denial of reh'g (Mar. 18, 2021), review filed (Mar. 29, 2021).

[169] Wat. Code § 13267, subd. (b)(1).

[170] General Order, at p.19, paragraph 3, AR0022; *id.*, at p. 30, paragraph 33, AR0033; *id.*, at p. 39, paragraph 17, AR0042; General Order, Attachment B, at p. 19, paragraph 31, AR0403; *id.*, at p. 29, paragraph 22, AR0413.

[171] General Order, at p. 31, paragraph 1.d, AR0034

[172] *Id.*, at p. 40, paragraph 19.d, AR0043; *see also* FEIR, vol. 3, at p. 2-32 (AR1561) (Master Response 2.5.5).

are having a measurable improvement on water quality.[173] Ranch-level monitoring and reporting requirements can be implemented either individually or through an approved third-party program and will be discontinued when the individual Discharger comes into compliance with targets or limits or if the discharge has otherwise ceased.[174]

Ranch-level discharge monitoring and reporting can be avoided by complying with the requirements of the General Order. It is not possible to predict the cost of ranch-level monitoring and reporting with specificity because the number of Dischargers that will be required to conduct this effort is unknown and each ranch's monitoring and reporting program will be tailored to that specific ranch. However, costs associated with ranch-level monitoring and reporting could include, but not be limited to, hiring a technical assistance provider to develop the ranch-level groundwater monitoring and reporting work plan, collecting data (including the cost of acquiring, operating, and maintaining field equipment), managing data, and developing reports.[175] The General Order estimated the cost of a hypothetical 100-acre ranch using 10 lysimeters to monitor groundwater discharge as approximately $1,600 per monitoring period.[176]

The agricultural petitioners rely on the State Water Board's ESJ Order to argue that ranch-level monitoring is an impractical, prohibitively costly, and often ineffective method for determining compliance with a nonpoint source control implementation program.[177] The Central Coast Water Board does not dispute that this would be the case if the ranch-level monitoring requirement was applied widely to all or a very large number of Dischargers. However, the General Order and the record is clear that ranch-level monitoring is anticipated to be applied as a consequence to a limited subset of Dischargers with significant and repeated violations of targets and limits or in areas with significant water quality impairment.[178] Therefore, the burden, including costs, of this monitoring and reporting requirement bears a reasonable relationship to the need for the reporting to document compliance with the General Order.

Moreover, the ranch-level monitoring and reporting requirements in the General Order are consistent with the NPS Policy and the State Water Board's ESJ Order. As is discussed in greater detail in response to Contention CCA-1, subsections C and D,

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[173] *E.g.*, Response to Comments, RAO, at p. 27 (AR16553) (Master Response 3.3.7) (discussing ranch-level surface discharge monitoring).

[174] General Order, at p. 20, paragraph 32, AR0404; General Order, Attachment B, at p. 29, paragraph 23, AR0413

[175] General Order, Attachment A, at p. 19, paragraph 57, AR0102.

[176] *Id.*, at p. 19, paragraph 58.i, AR0102.

[177] GS Petition, at pp. 41–42 (citing State Water Board Order WQ 2018-0002, at 18, AR33522).

[178] *See* General Order, Attachment A, at p. 16, paragraph 44, AR0099; FEIR, at pp. 2-21–2-22, AR1550–AR1541 (Master Response to Comment 2.3.9); FEIR, at p. 2-25 (AR1554) (Master Response to Comment 2.4.2); FEIR, at p. 2-31 (AR1560) (Master Response to Comment 2.5.3); FEIR, at p. 3-36 (AR1565) (Master Response to Comment 2.5.11); Response to Comments, RAO, at p. 5 (AR16531) (Master Response 1.6).

ranch-level monitoring and reporting is both a feedback mechanism to determine whether the General Order is achieving its stated purpose and a potential consequence for failure to achieve the General Order's stated purpose. The State Water Board stated in the ESJ Order:

> Instituting effective management practices requires sufficient monitoring and reporting to determine if existing management practices are leading to compliance with water quality requirements and implementation of improved water quality practices where they are not. This feedback mechanism – that a nonpoint source discharge control program link its implementation requirements, with some level of confidence, to expected water quality outcomes, and incorporate monitoring and reporting sufficient to verify that link – is a fundamental tenet of the Nonpoint Source Policy, captured in Key Elements 1, 2, and 4. But the Nonpoint Source Policy does not specify a particular level of granularity in monitoring and reporting and therefore leaves significant discretion to the water boards to determine the appropriate level of data gathering and reporting for different programs and different program components. The water boards must strike a balance that, on the one hand, requires sufficient data collection and reporting to allow for meaningful feedback on the program, but, on the other hand, avoids extensive data requirements that demand excessive and unwarranted time and cost to produce and analyze by the growers, the third party, and water board staff.[179]

Finally, the agricultural petitioners assert that the Central Coast Water Board lacks the authority to impose a groundwater ranch-level monitoring and reporting requirement to measure the volume of water that percolates below the root zone because this percolation is not a discharge of a waste, because California Code Regulations, title 23, section 783, states that "no permittee shall be required to file a report of waste discharge pursuant to section 13260 of the Water Code for percolation to the groundwater of water resulting from the irrigation of crops."[180] Section 783 pertains to applications to appropriate unappropriated water pursuant to Water Code Section 1202, and "permittee" in the context of section 783 is an entity that has been permitted to appropriate water.

Exemption in the water rights regulations from the general requirement to file a report of waste discharge is not dispositive of whether an activity constitutes a discharge of

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[179] State Water Board Order WQ 2018-0002, at 19, AR33523 (emphasis added).

[180] GS Petition, at p. 41; *see also* Cal. Code Regs., tit. 23, § 783; General Order, Attachment B, at 20, paragraph 32.c., AR0404.

waste. Additionally, as discussed above, ranch-level discharge monitoring requirements are technical reporting requirements (monitoring and reporting) pursuant to Water Code section 13267 and not a requirement to file a report of waste discharge pursuant to Water Code section 13260.

The Central Coast Water Board agrees with the agricultural petitioners' general contention that the application of irrigation water on agricultural fields is not a discharge of a waste. However, water that percolates below the root zone of crops and contains applied agricultural inputs such as fertilizers and pesticides in excess of what is required by the crops can cause or contribute to the impairment of groundwater quality and beneficial uses.[181] The General Order is not regulating irrigation water as a waste, but rather, it is regulating the discharge of nitrogen to waters of the state that results from irrigation, including the under-utilization of nitrate present in irrigation water (addressed through the requirement to monitor irrigation water nitrate concentration and volume)[182] and inefficient irrigation (addressed through the requirements to estimate crop evapotranspiration and to monitor irrigation water volume).[183] As discussed in response to Contention GS-3, substances such as insecticides, pesticides, and herbicides that "find their way into the waters of the state *after their use for agricultural purposes* . . . would constitute an industrial waste."[184] Water Code section 13267 only requires that the person directed to prepare technical or monitoring program reports "is suspected of having discharged or discharging." The requirement to conduct ranch-level discharge monitoring and reporting does not arise unless or until there is evidence of violation of nitrogen discharge targets and limits or significant nitrogen water quality objective exceedances; therefore, when ranch-level monitoring and reporting is required, there is a suspicion of discharge of nitrogen to waters of the state. Dischargers that are required to conduct ranch-level groundwater monitoring are suspected of discharging waste. It is appropriate to impose requirements on such Dischargers to quantify irrigation water percolating below the root zone of crops by monitoring and reporting the volume of the irrigation water applied to the crop and the concentration of nitrate or other contaminants in the percolating water.[185]

Contention GS-9: The requirement for specific numeric interim quantifiable milestones as part of the surface water follow-up workplan is inconsistent with the Nonpoint Source Policy. (GS Petition, pp. 42-43)

Response GS-9: The Central Coast Water Board does not agree with this contention. The requirement for follow-up surface receiving water implementation work plans to include numeric interim quantifiable milestones is consistent with the Nonpoint Source Policy.

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[181] General Order, Attachment C, at 23, paragraph 131, AR0479.

[182] General Order, Attachment A, at p. 141, paragraph 12.d, AR0141.

[183] *Id.*, at p. 141, paragraph 12.e, AR0141.

[184] 43 Ops.Cal.Atty.Gen. 302 (1964).

[185] General Order, Attachment A, at p. 141, paragraph 12.e, AR0224.

The term "numeric interim quantifiable milestones" in the General Order refers to the interim milestones developed as part of the follow-up surface receiving water implementation work plans.[186] The agricultural petitioners argue that the requirement to include numeric interim quantifiable milestones in the follow-up surface receiving water workplan is inconsistent with the Nonpoint Source Policy because Nonpoint Source Policy Key Element 3 does not require that "such milestones need to be numeric in nature, or tied directly to concentrations or loads of pollutants."[187] The agricultural petitioners' argument is unclear, as they assert that "[b]y limiting quantifiable milestones to something numeric and directly tied to concentrations or loads of pollutants, Ag Order 4.0 is inconsistent with the Nonpoint Source Policy," at the same time that they acknowledge that "[d]uring the course of the adoption hearing, the term was expanded to include other numeric interim quantifiable milestones related to management practices that can confirm progress towards reducing the discharge of relevant constituents."[188]

The contested provision in the General Order reads as follows:

> The [follow-up surface receiving water implementation] work plan must include numeric interim quantifiable milestones and follow-up actions, such as outreach, education, and management practice implementation and assessment, and, where applicable for pollutant source identification and abatement, additional surface receiving water monitoring locations. Numeric quantifiable milestones include numeric interim quantifiable milestones for relevant constituents (e.g., pollutant load or concentration) and numeric interim quantifiable milestones for management practices implemented that confirm progress towards reducing the discharge of relevant constituents (e.g., volume of discharge water diverted to treatment systems, treatment system pollutant reduction, distance of riparian area improvements, acres no longer receiving conventional pesticide applications).[189]

As the Central Coast Water Board understood agricultural petitioners' concern during the proceedings, petitioners requested flexibility to use quantifiable milestones that were based in management practice implementation rather than only target and limits tied to water quality limits. The Central Coast Water Board accommodated this concern with regard to the follow-up surface receiving water implementation workplans with the

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[186] General Order, at p. 40, paragraph 19.c, AR0043.

[187] GS Petition, at p. 43.

[188] *Id.*, at pp. 42-43.

[189] General Order, at p. 40, paragraph 19.c, AR0043.

language changes made at the adoption meeting, resulting in the provision quoted above. To the extent agricultural petitioners take issue with the nitrogen discharge targets and limits and final surface water receiving water limits established as quantifiable milestones in the General Order, the Regional Board had discretion under the NPS Policy to select numeric values tied to concentrations and loads as the quantifiable milestones.

As is discussed in response to Contention CCA-1, the Nonpoint Source Policy requires that a nonpoint source control implementation program "include a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements" when it is necessary to allow time to achieve water quality requirements.[190] The Nonpoint Source Policy does not specify or define what constitutes quantifiable milestones beyond stating that they must be designed to measure progress toward reaching water quality requirements.[191]

The NPS Policy provides flexibility and discretion to the Water Boards in how to apply the key elements and states in relevant part that "the [regional boards] are free to use the administrative tool(s) that they determine to be most appropriate for a particular implementation program."[192] The agricultural petitioners agree with this premise, but they disagree with how the Central Coast Water Board has implemented Nonpoint Source Policy Key Element 3.[193] When construing Key Element 3, *Monterey Coastkeeper v. State Water Resources Control Board* (2018) 28 Cal. App. 5th 342 observed that the Water Boards have "discretion to determine how much time is reasonable as well as the appropriate milestones and how quickly they must be met."[194] The Court of Appeal considered and upheld the trial court's determination that the State Water Board's modification of the Central Coast Water Board 2012 Agricultural Order did not comply with the Nonpoint Source Policy because a provision requiring "implementation of increasingly improved management practices . . . . [did] so without any definition or quantification of improvement."[195] *Monterey Coastkeeper* held that permit requirements that a discharger make "vague and indefinite improvement – 'a conscientious effort'" does not comply with the Nonpoint Source Policy.[196] By requiring numeric interim quantifiable milestones, the General Order avoids the fate of the modified 2012 Agricultural Order. Numeric interim quantifiable milestones provide a

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[190] Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, at p. 13, AR32832 (NPS Policy); *Monterey Coastkeeper v. State Water Res. Control Bd.* (2018) 28 Cal. App. 5th 342, 349.

[191] *See generally*, NPS Policy, at 13, AR32832.

[192] NPS Policy, at p. 11, AR32830

[193] GS Petition, at 43 ("Accordingly, the term 'quantifiable milestones' in Key element 3 is intended to be flexible and encompass a wide variety of performance goals and measures.")

[194] *Monterey Coastkeeper*, 28 Cal. App. 5th at p. 369.

[195] *Id.*, at p. 368.

[196] *Id.*, at p. 369.

clear metric by which to measure progress towards meeting the General Order's water quality requirements.

Throughout the development of the General Order, the Central Coast Water Board consistently interpreted the term "quantifiable milestones" to be numeric, and determined that numeric interim quantifiable milestones expressed as concentration and load targets and limits would be the most effective and clear means by which to measure the progress and effectiveness of the General Order and management practices implemented by Dischargers because numeric targets and limits have a direct nexus to pollutant discharge reductions and water quality objectives.[197] Numeric quantifiable milestones will drive the implementation of existing and new or improved management practices that would ultimately succeed in discharges meeting water quality objectives and thus increase the likelihood that the General Order will achieve the program's ultimate purpose of preventing exceedances of water quality objectives and protecting beneficial uses.[198] The General Order continues to require numeric interim quantifiable milestones based in concentrations or loads for the interim and final milestones for groundwater protection and the final milestones for surface water protection. Quantifiable milestones expressed as concentrations or loads are consistent with the NPS Policy and within the discretion of the Central Coast Water Board.

With regard to the surface water follow up work plans, which allow the Dischargers, individually or through the 3P-ACP, to develop the interim milestones for surface water protection, the General Order clarified that the implementation of management practices, expressed as numeric, quantifiable milestones, may constitute numeric interim quantifiable milestones. It is consistent with the NPS Policy and within the discretion of the Central Coast Water Board to allow milestones to be expressed as either concentration/load-based milestones or management practice implementation-based milestones.

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[197] The Draft Agricultural Order, Revised Draft Agricultural Order and Proposed Agricultural Order all included numeric targets and limits as quantifiable milestones for groundwater and surface water protection, and "quantifiable milestones" has been construed to mean "numeric" as early as the November 2018 options tables. *E.g.*, Staff Report, November 8-9, 2018 Central Coast Water Board Meeting, at p. 5, AR4806 (addressing numeric limits as compliance with requirement for quantifiable milestones). However, the requirement for follow-up surface receiving water implementation work plans to include interim quantifiable milestones initially did not include the term "numeric." *E.g.*, Draft Agricultural Order, Attachment C, at p. 25, paragraph 15.b, AR7275. The Proposed Agricultural Order presented to the Regional Board for consideration at the April 2021 adoption hearing clarified the interim quantifiable milestones in the work plans, with the change described in the Staff Presentation as follows: "Clarified that the follow-up surface receiving water implementation work plan(s) should contain 'numeric' interim quantifiable milestones." Staff Presentation, April 14-15, 2021 Board Meeting, AR16812; *see also* Response to Comments, RAO, at p. 45, AR16571 (Master Response 5.4); *id.*, at p. 7, AR16533 (Master Response 1.9); FEIR, at p. 2-7, AR1536, (Master Response to Comment 2.1.11); *id.*, at p. 2-34, AR1563 (Master Response to Comment 2.5.8)

[198] *E.g.*, FEIR, at p. 2-14, AR1543 (Master Response to Comment 2.3.2)

Contention GS-10: The long-term cumulative impact of the General Order on Central Coast agriculture will make agricultural production infeasible. (GS Petition, pp. 43-47)

Response GS-10: The Central Coast Water Board disagrees with this contention.

In support of this contention, the agricultural petitioners argue that the Central Coast Water Board should have prepared a "true and comprehensive economic impacts analysis so that the Central Coast Water Board was fully informed as to the short-term and long-term economic impacts that may occur from adoption of the [General Order] in its totality" and that the General Order "substitutes economic considerations and analysis with cost considerations."[199] This contention is a challenge to the adequacy of the Central Coast Water Board's consideration of economic factors under Water Code section 13241 when adopting the General Order.

Water Code sections 13263 and 13241 govern whether and how a regional board considers economics when adopting waste discharge requirements such as the General Order. Section 13263 requires regional boards to take into consideration the provisions of section 13241 when adopting waste discharge requirements. Section 13241, in turn, requires the regional boards to consider certain factors, including economic considerations, in the adoption of water quality objectives. The Central Coast Water Board's consideration of economics in developing and adopting the General Order complies with Water Code sections 13263 and 13241.

As the Central Coast Water Board stated in response to a similar comment made on the Draft Agricultural Order,

> The Central Coast Water Board has appropriately taken into account economic considerations in the development of the Order, in accordance with Water Code sections 13263 and 13241. Contrary to the commenter's assertion, an "economic impact assessment" is not required when applying Water Code section 13241. "*Section 13241 does not specify how a water board must go about considering the specified factors. Nor does it require that board to make specific findings on the factors.*" (City of Arcadia v. State Water Resources Control Board (2010) 191 Cal.App.4th 156, 177.) The Central Coast Water Board has summarized its economic considerations in the Findings at RAO Attachment A, pages 6-21, paragraphs 13-55. The Central Coast Water Board has revised the Findings to reflect that it has also taken into consideration economic impacts that were raised in the comments. (Attachment A, page 9, paragraph 27). Regarding whether economics were considered during the adoption of

[199] GS Pet., at p. 43.

> the water quality objectives upon which the receiving water limits are based, it is generally "presumed that official duty has been regularly performed." (Evid. Code, § 664; see City of Sacramento v. State Water Resources Control Bd. (1992) 2 Cal.App.4th 960, 976).[200]

The Court of Appeal has also further interpreted a Water Board's obligation to consider economics factors under Water Code section 13241, subdivision (d), when issuing waste discharge requirements. In *City of Duarte v. State Water Resources Control Board, et al.*, which concerned the inclusion of certain effluent limitations in waste discharge requirements for a municipal separate storm sewer system (MS4), the Court of Appeal reiterated the holdings in the *City of Arcadia* case cited in the response to comments and that case's predecessor that "[t]he manner in which the Water Control Boards consider and comply with Water Code section 13241 is within their discretion."[201] The *City of Duarte* court concluded that although the Water Boards "did not provide estimates of the costs for any of the individual Permittees to comply with the [MS4] Permit," the "extensive findings on, among other things, the nature, extent, ranges, averages, and variability of the costs to be incurred by the Permittees" satisfied Water Code section 13241, subdivision (d). Such findings "explained that the cost of regulating MS4 discharges is 'highly variable' among the Permittees, provided ranges and averages of cost data and economic impacts in several categories, considered how much more the Permittees' costs might be under the Permit's terms, identified potential sources of funds to cover the costs of the Permit, and concluded the failure to regulate would increase health-related expenses."[202] It is appropriate to consider cost of compliance with waste discharge requirements, as well "the costs of not addressing the problems of contaminated water."[203] In so holding, the *City of Duarte* court acknowledged that "every case arising under this statute will differ as to what economic standards must be evaluated."[204]

The General Order's cost considerations findings satisfy the Central Coast Water Board's obligations under Water Code section 13241, subdivision (d). First, the findings consider the costs to implement the General Order and "discuss the potential change in regulatory costs between the 2017 agricultural order (Ag Order 3.0) and this Order (Ag Order 4.0). Several assumptions were required to be made for these analyses and there are several inherent limitations and uncertainties . . . . "[205] The relevant findings begin on page 7 of the General Order, Attachment A, and continue through part of page 33.

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[200] FEIR, at p. 3-592, AR2177 (emphasis added).

[201] *City of Duarte v. State Water Res. Control Bd.* (2021) 60 Cal. App. 5th 258, 274, as modified on denial of reh'g (Feb. 19, 2021), review denied (Apr. 28, 2021)

[202] *Id.,* at p. 275.

[203] *Id.*, at p. 276.

[204] *Id.*, at p. 275–276.

[205] General Order, Attachment A, at p. 7, paragraph 13, AR0090.

The findings discuss the general economic scope of agricultural production in the central coast region, the costs of production for Dischargers in the central coast region, the estimated costs of regulatory compliance, and the estimated costs of compliance with the General Order.[206] Because many of the costs associated with the permit relate to monitoring and reporting requirements, the Central Coast Water Board found that those costs could be reduced through participation in "a third-party program for groundwater or surface water monitoring and reporting in lieu of individual monitoring and reporting."[207] The findings acknowledge and identify assumptions, limitations and uncertainties with the estimated costs of compliance.[208] The costs of complying with the General Order are estimated over five-year periods so as to have a basis for comparison with the 2017 Agricultural Order, which was of limited duration.[209] The Central Coast Water Board also found it appropriate to use "five-year project periods" to "account for one-time costs and the phasing and prioritization approach" in the General Order.[210] The cost considerations take into account the cost of complying with the General Order requirements "every five years" or "over the course of five years."[211] The implication of this approach is that once the one-time costs are incurred, the estimated costs of compliance for subsequent five-year periods are less than described in the General Order.[212]

Where appropriate, the General Order takes into account cost information submitted by commenters, including the technical memoranda that the agricultural petitioners cite to in footnotes 87 and 88 of their petition.[213] The first of these technical memoranda, prepared by ERA Economics and titled "Economic Review of Central Coast Water

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[206] *See generally*, *id.*, at pp. 8–27, paragraphs 18–91, AR0091–AR110.

[207] *Id.*, at p. 7, paragraph 14, AR0090; *see also*, *e.g.*, *id.*, at p. 30, paragraphs 102–103, AR0113.

[208] *Id.*, at pp. 28–30, paragraphs 92–103, AR0111–AR0113.

[209] *Id.*, at p. 28, paragraph 94, AR0111.

[210] *Id.*

[211] *See id.*, at pp. 24, paragraph 82, AR0107 (describing estimated TNA reporting costs "over the course of five years" and also acknowledging an expected decrease in costs over time); *id.*, at pp. 25, paragraph 85, AR0108 (describing estimated costs of developing INMP effectiveness report "every five years");

[212] *E.g., id.*, at p. 21, paragraph 68, AR0104 ("This analysis assumes all 10 sites are added in the first year of Ag Order 4.0 . . . .")

[213] *Id.*, at pp. 29–30, paragraph 102, AR0112–AR0113; FEIR, at pp. 2-48, AR1577 (Master Response to Comment 2.9.1) ("[T]he CCWB has considered the cost information submitted through [the agricultural stakeholders'] comments and other available sources. Where appropriate, [the Revised Agricultural Order], Attachment A, Findings have been revised to reflect revised cost information."); *e.g.*, Response to Comments, RAO, at p. 52, AR16578 (Master Response 9) ("The analysis for lettuce in Monterey County estimated the total gross cost of compliance with nitrogen discharge targets and limits would range between $119.4 million at the 200 pounds per acre per year rate to $683 million per year at the 50 pounds per acre per year rate. This estimated range appears to exaggerate the economic impacts and may not be representative of costs for other crops in other parts of the region.").

Board Ag Order 4.0 and Draft Environmental Impact Report"[214] is a critique primarily of the DEIR's alleged failure to evaluate the economic impact of the Draft General Order on jobs, land use, and agricultural resources. The Central Coast Water Board discusses the Technical Memorandum in section E of the response to Contention GS-12, in relation to the DEIR's economics section. Regardless of the merits of its assertions — and the Central Coast Water Board disagreed with much of its underlying assumptions — the type of analysis proposed by the Technical Memorandum is not required by Water Code section 13241. In the case of the Technical Memorandum from ERA Economics titled "Example Economic Impacts of the Central Coast Water Board Ag Order 4.0,"[215] the Central Coast Water Board found that the commenters' cost information was misleading and not representative of potential estimated costs of compliance.[216] This is the Monterey County Lettuce Example discussed in response to Contention GS-5 and, in greater detail, in response to Contention GS-12, subsection E.

Other comments on the Draft Agricultural Order stated that there would be "significant economic impacts from adopting [the General Order]. However, leading up to and after the release of the DAO, agricultural stakeholders did not provide detailed cost analyses to substantiate these statements, even following pointed requests by [Central Coast Water Board] staff."[217] The administrative record acknowledges that commenters believed that the economic impacts of the General Order would differ from those discussed in the Draft Agricultural Order, but supporting information was not provided to the Central Coast Water Board and therefore not a part of the economic considerations under Water Code section 13241. Additionally, revisions to the Draft Agricultural Order resulting in removal of the requirements for riparian and operational setbacks and the addition of the third-party alternative compliance pathway for groundwater protection rendered the commenters' analyses of the costs of implementing the riparian area management requirements and costs of compliance of nitrogen application and discharge limits by the deadlines in the Draft Agricultural Order no longer applicable.[218]

The General Order findings also consider the cost of existing water quality impacts from waste discharges from irrigated agricultural operations, in particular recognizing the existence of nitrate concentrations in groundwater in exceedance of water quality objectives, the reliance that central coast region communities have on groundwater as a source of drinking water, and the cost of providing nitrate-compliant water to such

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[214] Technical Memorandum, ERA Economics (May 11, 2020), AR8303–AR8330.

[215] Technical Memorandum, ERA Economics (June 19, 2020) AR8331–AR8344.

[216] FEIR, vol. 3, at p. 2-54 (Response 2.10.2). Although Response 2.10.2 addresses the consideration of economics impacts under the California Environmental Quality Act, the determination that the analysis "exaggerate[d] economic impacts" is applicable to the Central Coast Water Board's decision not to apply the technical memorandum in the General Order's economic considerations under Water Code section 13241.

[217] *Id.*, vol. 3, at p. 2-48 (Response 2.9.1).

[218] *Id.*

communities.[219] Similar to the MS4 permit at issue in *Duarte*, the General Order findings describe the potential costs of adverse effects on the environment caused by waste discharges from irrigated agricultural operations.[220] The Central Coast Water Board's consideration of economic factors satisfies the requirements of Water Code section 13241, which "does not specify how a water board must go about considering the specified factors."[221]

B. Responses to Contentions Raised by the Environmental Petitioners

The environmental petitioners' contentions CCA-1 through CCA-6 raise issues concerning the General Order. These issues raised relate to the Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (Nonpoint Source Policy or NPS Policy), the state and federal antidegradation policies, the Reasonable and Beneficial Use doctrine, public trust, and TMDL compliance dates.

Contention CCA-1: The General Order is not consistent with the Nonpoint Source Policy. (CCA Petition, p. 11)

Response CCA-1: The environmental petitioners contend that the General Order violates the Nonpoint Source Policy because the General Order fails to ensure attainment of its stated purposes, the timelines and deadlines in the General Order are improperly attached to and dependent on the development of past and future industry practices, the General Order does not require adequate monitoring to verify that management practices are effectively controlling pollution, and the General Order is not consistent with State Water Board policies, guidance, previous orders, or factual findings related to consequences and enforcement. These alleged shortcomings are tied to Nonpoint Source Policy Key Elements 2, 3, 4, and 5, which are briefly described above in Section IV of this Response to Consolidated Petitions. The Central Coast Water Board disagrees with these contentions and addresses them in turn below.

A. High Likelihood that the General Order Will Attain Water Quality Requirements (CCA Petition pp. 11-13)

The Nonpoint Source Policy states that a nonpoint source control implementation program must "include a description of the [management practices] and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purpose(s), the process to be used to select or develop management practices, and the process to be used to ensure and verify proper [management practice] implementation," which is framed as Key Element 2 of the

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[219] General Order, Attachment A, at pp. 30–32, paragraphs 105–109, AR0113–AR0115.

[220] *Id.*, at pp. 32–33, paragraphs 110–113, AR0115–AR0116.

[221] *City of Arcadia v. State Water Resources Control Board* (2010) 191 Cal.App.4th 156, 177.

Nonpoint Source Policy.[222] Consistent with this requirement, the Central Coast Water Board made the following finding:

> This Order requires compliance with water quality requirements. The Order relies on implementation of management practices to achieve water quality requirements but does not substitute compliance with management practices for compliance with discharge targets and limits and receiving water limits. The Central Coast Water Board finds that there is a high likelihood that this Order will achieve its stated water quality objectives because it includes program elements that require 1) compliance with numeric targets and limits based on a time schedule (Key Element 3 specific time schedule and quantifiable milestones), 2) monitoring and reporting to evaluate management practice effectiveness towards achieving compliance with numeric targets and limits and ultimately meeting water quality objectives and protecting beneficial uses (Key Element 4 feedback mechanism), and 3) follow-up actions if the management practices do not achieve compliance with the application and discharge target and limits and receiving water limits (Key Element 5 consequences), and for the additional reasons stated in findings 74-88, and 100-102.[223]

A stated objective of the General Order, as relevant to water quality requirements,[224] is to:

> a. Protect and restore beneficial uses and achieve water quality objectives specified in the Basin Plan for commercial irrigated agricultural areas in the central coast region by:
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> i. Minimizing nitrate discharges to groundwater,
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> ii. Minimizing nutrient discharges to surface water,
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> iii. Minimizing toxicity in surface water from pesticide discharges,
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> iv. Protecting riparian and wetland habitat, and

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[222] NPS Policy, at p.12, AR32831.

[223] General Order, Attachment A, at pp. 42–43, paragraph 133, AR0125–AR0126.

[224] The Nonpoint Source Policy provides that "[f]or purposes of this policy, the term "water quality requirements" is used to include water quality objectives established to protect beneficial uses and any higher level of water quality needed to comply with the State's antidegradation policy." NPS Policy, at p. 12, AR32831.

v. Minimizing sediment discharges to surface water.

b. Effectively track and quantify achievement of []a.i through []a.v over a specific, defined time schedule.[225]

To achieve its stated objectives, the General Order requires that Dischargers not cause or contribute to exceedances of applicable water quality objectives, protect beneficial uses, and prevent nuisance[226] pursuant time schedules set in the Order. The General Order includes numeric targets and limits for fertilizer nitrogen application and nitrogen discharge to minimize nitrate discharges to groundwater; surface receiving water limits for nutrients to minimize nutrient discharges to surface water; surface receiving water limits for pesticides and toxicity to minimize toxicity in surface water from pesticide discharges; and surface receiving water limits for sediment and turbidity to minimize sediment discharges to surface water. A prohibition on disturbing certain riparian vegetative cover minimizes toxicity in surface water from pesticide and sediment discharges to surface waters and also protects riparian and wetland habitat.

The General Order also includes requirements and prohibitions, in Part 3, Section D, paragraphs 4 through 10, that are not targets and limits to achieve the aforementioned objectives. The General Order requires proper handling, storage, disposal, and management of fertilizers, fumigants, pesticides, herbicides, rodenticides, and other chemicals to further minimize nutrient discharges to surface water and minimize toxicity in surface water from pesticide discharges.[227] General Order requirements to minimize sediment discharges to surface water include provisions to implement water quality protective management practices to prevent erosion, reduce stormwater runoff quantity and velocity, and hold fine particles in place; to minimize the presence of bare soil vulnerable to erosion and soil runoff to surface waters and to implement erosion control, sediment, and stormwater management practices in non-cropped areas; and for Dischargers who utilize agricultural drainage pumps, to implement management practices to dissipate flow and prevent channel and/or streambank erosion resulting in increased sediment transport and turbidity within surface water.[228]

Consistent with Key Elements 4 and 5 of the Nonpoint Source Policy and discussed in greater detail below in subsections C and D of this response to Contention CCA-1, the General Order includes adequate feedback mechanisms to determine whether additional or different management practices are required and potential consequences that result in the implementation of additional or different management practices.

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[225] General Order, at p. 2, paragraph 5, AR0005.

[226] *Id.*, at p. 42, paragraph 1, AR0045.

[227] *Id.*, at p. 44, paragraph 11, AR0047.

[228] *Id.*, at p. 44, paragraphs 12–14, AR0047.

In accordance with Water Code section 13260, the General Order does not specify the management practices that a Discharger must employ to meet the permit requirements. Nevertheless, the General Order identifies agricultural management practices that are commonly used and could be implemented to meet the nutrient, pesticides and toxicity, and sediment and turbidity limits.[229] These management practices include implementing or establishing the following: conservation cover, conservation cover crop rotation, contour buffer strips, cover crop, denitrifying bioreactor, filter strip, integrated pest management program, micro-irrigation system, nutrient management, riparian forest buffer, and sediment control basin.[230] Specific management practices that each Discharger implements for irrigation and nutrient management, pesticide management, sediment and erosion management, and, for a subset of Dischargers, stormwater runoff management, must be documented in Farm Water Quality Management Plans and reported to the Central Coast Water Board in Annual Compliance Forms (ACF).[231] The ACF must also include an assessment of the effectiveness of management practices implemented.

Despite these compelling findings, the environmental petitioners argue that the General Order does not have a high likelihood of achieving its purposes because the General Order does not protect and restore all beneficial uses in the Basin Plan, particularly aquatic life; the nitrogen discharge targets for Dischargers participating in the third-party alternative compliance pathway program are not sufficiently stringent; operational and riparian setbacks are required to protect and restore surface water quality; and the General Order relies on the Department of Pesticide Regulation. None of these arguments have merit.

1. Nitrate Surface Receiving Water Limits

The environmental petitioners specifically allege that the permit requirements related to nitrate surface receiving water limits are not protective of aquatic life.[232] This allegation ignores that the General Order prohibits Dischargers from "caus[ing] or contribut[ing] to exceedances of applicable water quality objectives, as defined in Attachment A [of the General Order]" unless in compliance with the General Order, and it requires Dischargers to "protect all beneficial uses for inland surface waters, enclosed bays, and estuaries."[233] Among the beneficial uses that must be protected are the aquatic habitat beneficial uses.[234]

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[229] General Order, Attachment A, at pp. 13–16, paragraph 41, AR0096–AR0099.

[230] *Id.*

[231] General Order, at p. 20, paragraph 8, AR0023; *see also id.*, at p. 19, paragraph 2, AR0022.

[232] CCA Petition, at p. 12.

[233] General Order, at p.42, AR0045; General Order, Attachment A, Table A.B-1 & Table A.B-2, at p. 91–100, AR0174–AR0183.

[234] General Order, Attachment A, Table A.B-2, at p. 93–100, AR176–AR0183 (water quality objectives for surface water).

The General Order also requires compliance with surface receiving water limits for nitrate that are based on TMDL load allocations specific to protecting aquatic habitat beneficial uses. These nitrate surface receiving water limits are based on the Franklin Creek Nutrients TMDL, Lower Salinas River Watershed Nutrient TMDL, Pajaro River Watershed Nutrient TMDL, and Santa Maria River Watershed Nutrients TMDL and are stated as "wet season" and "dry season" limits.[235] For waterbodies that do not have a TMDL for nitrate, the General Order establishes a nitrate surface receiving water limit of 10 mg/L based on the water quality objective for the municipal and domestic supply beneficial use, which is in turn based on the drinking water maximum contaminant level (MCL).[236]

A finding in the General Order estimates that "concentrations on the order of 1.0 mg/L nitrate as nitrogen are necessary to protect aquatic life beneficial uses from biostimulation based on an evaluation of [Central Coast Ambient Monitoring Program] data" to illustrate the potential impacts of nitrogen discharge to surface water.[237] The finding was not intended to support a specific concentration for the nitrate receiving water limits, as the environmental petitioners allege. In fact, it is inappropriate to establish surface receiving water limits based on the 1.0 mg/L nitrate as nitrogen concentration. The 1.0 mg/L nitrate as nitrogen concentration is an interpretation of the Basin Plan narrative water quality objective for biostimulatory substances that the Central Coast Water Board has used for the limited purpose as a screening value for evaluating surface water quality impairments to aquatic life beneficial uses, to include impaired waterbodies on the 2014-2016 Clean Water Act 303(d) List.[238] Specifically, the 1.0 mg/L nitrate as nitrogen screening value is used in combination with specific evidence of an unacceptable biostimulatory response, such as dissolved oxygen,

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[235] Basin Plan, at p. 244, AR34304 (TMDL for Nitrogen and Phosphorus Compounds in Streams of the Franklin Creek Watershed) ("The TMDLs protect and restore the MUN and GWR beneficial uses, as well as several aquatic habitat beneficial uses that are currently being degraded by violations of the biostimulatory substances objective."); *id.*, at p. 178, AR34238 (TMDL for Nitrogen Compounds and Orthophosphate in the Lower Salinas River Watersheds) ("Reducing nutrient pollution and ultimately achieving the TMDLs for nutrients in these waterbodies will therefore restore and be protective of the full range of aquatic habitat, MUN, GWR, and/or AGR designated beneficial uses of the surface waters which are being currently impaired by excess nutrients."); *id.*, at p. 217, AR34277 (TMDL for Nitrogen Compounds and Orthophosphate in Streams of the Pajaro River Basin) ("The TMDLs protect and restore the municipal and domestic water supply beneficial use (MUN) and aquatic habitat beneficial uses currently being degraded by violations of the toxicity objective and the biostimulatory substances objective."); *id.*, at p. 205, AR34265 (TMDL for Nitrogen Compounds and Orthophosphate in the Lower Santa Maria River Watershed) ("The TMDLs protect and restore the municipal and domestic water supply beneficial use (MUN) and aquatic habitat beneficial uses currently being degraded by violations of the toxicity objective and the biostimulatory substances objective . . . . ").

[236] General Order, Attachment A, at p. 173, paragraph 22, AR0256; Basin Plan at 32, AR34092.

[237] General Order, Attachment A, at p. 173, paragraph 22, AR0256.

[238] FEIR, vol. 3, at 3-748–3-749, AR2333–AR2334; see generally, Central Coast Water Board (2010) *Interpreting Narrative Objectives for Biostimulatory Substances for California Central Coast Waters*, AR18882–AR18883. The narrative water quality objective for biostimulatory substances states: "Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses." Basin Plan, at p. 31, AR34091.

chlorophyll, or algae impairment.[239] Use of the 1.0 mg/L nitrate as nitrogen concentration independently to establish numeric surface receiving water limits for nutrients in non-TMDL areas would not be appropriate, and the surface receiving water limits are instead appropriately based on the drinking water MCLs protective of the municipal and domestic supply beneficial use.

2. Nitrogen Discharge Limits for Participants in the Third-Party Alternative Compliance Pathway Program

The environmental petitioners argue that the nitrogen discharge final target of 300 pounds of nitrogen per acre per year for participants in the 3P-ACP program is not protective of water quality and does not support a finding that there is a high likelihood that the most polluted groundwater basins will achieve the applicable 10 mg/L water quality objective for nitrate.[240] This argument is based on the finding that the groundwater protection value that will be protective of the municipal and domestic supply beneficial use and applied to individual Dischargers not participating in the 3P-ACP program is 50 pounds of nitrogen per acre per year.[241]

General background on the 3P-ACP is provided in response to Contention GS-1. The nitrogen discharge targets for Dischargers who are in a 3P-ACP program are one of several requirements in the General Order to minimize the discharge of nitrate to groundwater so that discharges from irrigated agriculture will cease to cause and contribute to exceedances of water quality objectives and to protect the municipal and domestic supply beneficial use. The likelihood of the General Order achieving its purpose does not hinge solely on the nitrogen discharge targets, and it is improper to consider the nitrogen discharge targets in the third-party alternative compliance pathway in a vacuum. Instead, the permit requirements in Part 2, Section C.2. establishing the third-party alternative compliance pathway for groundwater protection must be considered as a whole.

Part 2, Section C.2 of the General Order includes three components. In addition to the nitrogen discharge targets, Dischargers in a 3P-ACP program must comply with fertilizer application limits, and the third-party alternative compliance pathway program administrator must, on behalf the Dischargers, develop and submit work plans that address groundwater protection areas, formulas, values, and targets. When approved by the Central Coast Water Board Executive Officer, these work plans establish groundwater protection (GWP) areas, formulas, values, and collective numeric interim and final nitrogen discharge targets that will be protective of the municipal and domestic

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[239] Central Coast Water Board (2010) *Interpreting Narrative Objectives for Biostimulatory Substances for California Central Coast Waters*, AR18883 ("[W]e will designate water bodies as impaired for aquatic life use when nitrate concentrations exceed 1.0 mg/L NO3-N and there is additional evidence of eutrophication . . . .").

[240] CCA Petition, at p. 12.

[241] *Id.* (citing General Order, Attachment A, at p. 87, AR0170).

supply beneficial use in the specific GWP areas.[242] This process for a 3P-ACP program to develop the GWP formula, values, and targets for designated groundwater protection areas is consistent with the precedential direction in the State Water Board's Eastern San Joaquin Order.

The nitrogen discharge targets appear in Table C.2-2. These targets become more stringent over time. The General Order establishes a process by which Dischargers who repeatedly exceed the nitrogen discharge targets become ineligible to participate in a 3P-ACP program and must comply the individual requirements in Part 2, Section C.1, including the nitrogen discharge targets and limits in Table C.2-1.[243]

Additionally, once the workplans are approved by the Executive Officer, while Dischargers must meet the interim and final nitrogen discharge targets on a groundwater protection area basis, the collective interim and final targets must be designed such that there is a means of assessing individual ranch level contribution to the success or failure of complying with the targets.[244] Groundwater protection areas with repeated and excessive exceedances of the interim and final targets will result in Dischargers in those areas losing their eligibility to participate in the 3P-ACP program and subject to individual requirements in Part 2, Section C.1.[245]

The permit requirements related to groundwater protection areas, formulas, values, and targets, in addition to the nitrogen application limits and nitrogen discharge targets, are expected to result in Dischargers reducing their nitrogen discharges to groundwater and meeting the water quality objective of 10 mg/L in a reasonable time period. The requirements in Part 2, Section C.2 of the General Order together are expected to protect and restore the municipal and domestic supply beneficial use and achieve water quality objectives minimizing nitrate discharges to groundwater. The environmental petitioners' focus on solely the nitrogen discharge targets in the alternative compliance pathway ignores that those provisions are only one component of the groundwater protection portion of the General Order.

3. Operational and riparian setbacks

The Central Coast Water Board disagrees that operational and riparian setbacks are required for the General Order to have a high likelihood of attaining water quality requirements. As previously stated, a main objective stated in the beginning of the General Order is to protect and restore beneficial uses and achieve water quality objectives specified in the Basin Plan. This main objective is followed by sub-objectives that summarize how the water quality requirements will attained:

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[242] General Order, at p.34, AR0037. The interim and final nitrogen discharge targets in the approved work plans, as well as other work plan components, must be scientifically supported. *Id.*

[243] *Id.*, at p.33, AR0036.

[244] *Id.*, at p.34, AR0037.

[245] *Id.*, at p. 35, AR0038.

> i. Minimizing nitrate discharges to groundwater,
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> ii. Minimizing nutrient discharges to surface water,
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> iii. Minimizing toxicity in surface water from pesticide discharges,
>
> iv. Protecting riparian and wetland habitat, and
>
> v. Minimizing sediment discharges to surface water.[246]

Sub-objectives ii. through v. pertain to surface water quality, to which operational and riparian setbacks are relevant. These sub-objectives work together to meet the main objective of "protect and restore beneficial uses and achieve water quality objectives specified in the Basin Plan for commercial irrigated agricultural areas in the central coast region."

As explained in the Responses to Comments on the Revised Draft Agricultural Order,

> While the findings in [the Draft Agricultural Order] supported the environmental benefits of the riparian area management requirements, based on comments received concerning the complexity, legality, and economic burden of the requirements, the CCWB determined it was premature to consider imposing all the riparian area management requirements proposed by staff, including the riparian and operational setbacks. Dischargers must still meet the surface receiving water limits established in the Order in accordance with applicable time schedules and may choose to implement riparian and operational setbacks to satisfy those limits.[247]

Setbacks from waterbodies are not the only way to protect and restore beneficial uses and achieve water quality objectives in surface waters. As stated above, in addition to surface receiving water limits, requirements in Part 2, Section D of the General Order also address surface water quality.[248]

Finally, as the environmental petitioners observe, a General Order provision specifically focused on protecting riparian and wetland habitat prohibits certain disturbances of riparian areas. The provision, which is substantively similar to a provision in the 2017 Agricultural Order to protect riparian areas, states:

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[246] *Id.*, at p. 2, AR0005.

[247] Responses to Comments, RAO, at p. 57, AR16583 (Master Response 10.3).

[248] General Order, at pp. 43–46, AR0045–AR0049.

> Disturbance (e.g., removal, degradation, or destruction) of existing, naturally occurring, and established native riparian vegetative cover (e.g., trees, shrubs, and grasses), unless authorized or exempted (e.g., Clean Water Act [CWA] section 404 permit and CWA section 401 certification, WDRs, waivers of WDRs, a California Department of Fish and Wildlife [CDFW] Lake and Streambed Alteration Agreement, or municipal ordinance), is prohibited. Dischargers must avoid disturbance in riparian areas to minimize waste discharges and protect water quality and beneficial uses.[249]

For the reasons discussed above, the Central Coast Water Boards disagrees that operational and riparian setbacks are required for the General Order to have a high likelihood of attaining water quality requirements.

4. Reliance on the Department of Pesticide Regulation

In further support of their argument that the General Order does not have a high likelihood of achieving its purposes, the environmental petitioners assert that "ongoing reliance on the status quo of regulatory efforts by third-party agencies" is in violation of the Nonpoint Source Policy.[250] The Regional Board disagrees with this assertion, which is conclusory and made without articulating how the alleged reliance is occurring and falls short of complying with the Nonpoint Source Policy.

Although a stated objective of the General Order is to "Protect and restore beneficial uses and achieve water quality objectives specified in the Basin Plan for commercial irrigated agricultural areas in the central coast region," the General Order does not specifically identify pesticides in groundwater as a component of how the objective will be met through the General Order. Instead, the General Order identifies the challenges with addressing pesticides in groundwater and describes how the Regional Board will confront those challenges. The Regional Board's approach does not indicate that the General Order does not have a high likelihood of achieving its purposes, and in fact, addressing pesticides in groundwater is outside the scope of the General Order's stated purposes.

The General Order acknowledges that "monitoring data for pesticides in groundwater in the central coast region is limited, meaning the potential impacts to groundwater resources are largely unknown"[251] and that "[c]urrently available central coast

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[249] *Id.*, at p.46, AR0049; *see also* Responses to Comments, RAO, at p. 51, AR16577 (Master Response 8.2) (discussing language in the Revised Draft Agricultural Order and the 2017 Agricultural Order).

[250] CCA Petition, at p. 13.

[251] General Order, Attachment A, at p. 163, AR0246 (citing CCRWQB Staff Report, Groundwater Quality Conditions and Agricultural Discharges in the Central Coast Region, AR18965).

groundwater pesticide data exist mainly due to access to specialized laboratories by DPR and the GAMA program studies."[252] The General Order explains how gaps in data concerning pesticides in groundwater will be filled:

> Based on consultation with DPR and other relevant agencies, the Central Coast Water Board will evaluate data gaps in groundwater pesticide information and determine if further Water Board investigation is appropriate. The Central Coast Water Board anticipates requiring specific Dischargers enrolled in this Order to conduct groundwater monitoring for specific pesticides in specific groundwater basins via Water Code section 13267 authority. In such cases, there may be situations where Dischargers choose to coordinate with DPR for sample collection and analysis. Regardless of DPR's level of involvement with sample collection, however, Dischargers will to be responsible for compliance with future monitoring and reporting requirements.[253]

The General Order further explains that working with the Department of Pesticides Regulation is reasonable due to the scarcity and high costs of laboratories capable of conducting analyses regarding pesticides in groundwater:

> [S]uch specialized laboratories are not accessible to the general public, and many commercial laboratories are not capable of analyzing for many currently used pesticides with the potential to migrate to groundwater. In addition, for commercial laboratories that can conduct analyses for relevant pesticides, the analyses are costly, and many laboratories have difficulty achieving sufficiently low detection and reporting limits. Based on these limitations and considerations, Dischargers are encouraged to work with DPR staff to help facilitate pesticide monitoring should it be required by the Central Coast Water Board under Water Code section 13267 authority.[254]

The Regional Board's discussion regarding pesticides in groundwater, consultation and recommended collaboration with the Department of Pesticides Regulation, and explanation of how the Regional Board may use its authority under Water Code section 13267 to require monitoring and reporting to further obtain data on pesticides in groundwater is reasonable, and the environmental petitioners fail to show otherwise.

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[252] *Id.*, at p. 166, AR0249.

[253] *Id.*

[254] *Id.*, at pp. 166–167, AR0249–AR0250.

The environmental petitioners' argument regarding pesticides and toxicity in surface water, which is a component of the General Order's objective, also lacks merit. In particular, the environmental petitioners do not identify how the General Order allegedly "relies" on regulation by the Department of Pesticides Regulation to address pesticides and toxicity in surface water. The record is clear that the General Order has a high likelihood of achieving the purpose of "[p]rotecting and restor[ing] beneficial uses and achieve water quality objectives specified in the Basin Plan for commercial irrigated agricultural areas in the central coast region by . . . [m]inimizing toxicity in surface water from pesticide discharges[.]"

The Regional Board regulates the discharge of pesticides to surface water through surface receiving water limits for pesticides and toxicity established in the General Order. For waterbody/pollutant combinations with an applicable TMDL, the load allocation is the basis for the surface receiving water limit. In all other waterbodies, the General Order establishes pesticides and toxicity receiving water limits based on the narrative water quality objectives and scientific sources. Over ten pages of the General Order's Findings discuss pesticides and toxicity impacts to surface water quality, including existing conditions that need to be improved, to support the establishment of the surface receiving water limits in Table C-3.5. This process is discussed in detail in response to the agricultural petitioners' Contention GS-7, above.

Finally, the General Order requires Dischargers to develop and implement a Pesticide Management Plan (PMP), which is a component of the Farm Plan and a requirement independent of regulation by any other agency.[255] The PMP includes descriptions of all pesticide management practices at a ranch, including "pesticide application characteristics (e.g., timing, formulations, wind, and rainfall monitoring, etc.) and any integrated pest management (IPM) practices implemented (e.g., scouting, beneficial insects, etc.)."[256] The PMP must be maintained with the Farm Plan and submitted to the Central Coast Water Board upon request.[257] Summary PMP information must be submitted with the Annual Compliance Form.[258]

The environmental petitioners' argument plainly ignores that the General Order includes surface receiving water limits and planning and reporting requirements to address the impacts of pesticides and toxicity to surface water quality.

B. Timelines and Quantifiable Milestones (CCA Petition, pp. 14-16)

The environmental petitioners contend that the General Order does not comply with Key Element 3 of the Nonpoint Source Policy because the General Order does not include

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[255] General Order, at p. 36, paragraph 9, AR0039.

[256] *Id.*, at p. 38, paragraph 12.c., AR0041.

[257] *Id.*, at p. 36, paragraph 9, AR0039.

[258] *Id.*

deadlines to achieve groundwater water quality objectives and "[a]s to surface water, improperly delegates the role of developing timelines and milestones to yet-to-be established third party programs."[259] The Central Coast Water Board disagrees with this contention.

Based on the context of the environmental petitioners' argument, the Central Coast Water Board interprets their assertion as the Nonpoint Source Policy requires the General Order to include a deadline by which nitrate water quality objectives in groundwater will be *attained in receiving waters*.[260] Assuming this is the environmental petitioners' position, the Central Coast Water Board does not agree with this premise.

What constitutes the water quality requirements for a nonpoint source pollution control implementation program is dictated by the program's authorizing statute. The General Order is issued under Water Code section 13263, which authorizes the regulation of waste discharges. Water Code section 13263 does not pertain to cleanup of contaminated water. The Findings appropriately described the General Order's scope: "This Order requires Dischargers to reduce their discharge such that it no longer causes or contributes to exceedances of water quality objectives but does not require Dischargers to clean up contaminated groundwater to achieve the water quality objectives . . . . Cleanup will be achieved by the recharge of increasingly better-quality agricultural return flows and reduced nitrogen loading over time."[261] Although the Findings discuss groundwater cleanup timeframes, the discussion was included "to establish the impact and role of this Order in ultimately achieving water quality objectives in groundwater," not because the Nonpoint Source Policy mandates the General Order to require Dischargers to attain groundwater water quality objectives.[262]

The General Order water quality requirements relevant to the environmental petitioners' argument include: "Except in compliance with this Order, Dischargers must not cause or contribute to exceedances of applicable water quality objectives. . . . , must protect all beneficial uses for inland surface waters, enclosed bays, and estuaries, and for

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[259] CCA Petition, at p. 13–14.

[260] *Id.*, at p. 14 & fn.34 ("Timelines for achieving nitrate water quality objectives in groundwater are not included in the [General] Order, and it is unclear when, if ever, groundwater will achieve nitrate standards."). To the extent the environmental petitioners' argument may be that the interim and final targets and limits for nitrate discharges to groundwater in the General Order must be expressed as a concentration in the discharge, rather an A-R based value, the State Water Board, in its ESJ Order, has already endorsed the use of the multi-year AR values as an indicator of nitrogen loading to groundwater: "The multi-year A/R ratio and the A-R difference are . . . appropriate metrics for determining measurable progress toward ensuring agricultural discharges are not causing or contributing to exceedances of water quality standards in the groundwater." (State Water Board Order WQ 2018-0002, at p. 65, AR33569.) Further, Dischargers not in compliance with the targets and limits of the General Order must show compliance with the receiving water limitations of the General Order. (General Order, at p.42, paragraph 1, AR0045.)

[261] General Order, Attachment A, at p. 156, AR0239.

[262] *Id.*

groundwater, as outlined in sections 3.3.2 and 3.3.4 of the Basin Plan, and must prevent nuisance as defined in Water Code section 13050" and "Dischargers must achieve applicable Total Maximum Daily Load (TMDL) Load Allocations by achieving the surface water [sic] receiving limits established in this Order."[263] The State Water Board has affirmed that such mandates in a permit regulating nonpoint source discharges constitute water quality requirements.[264] Consistent with the Nonpoint Source Policy and the Court of Appeal's holding in *Monterey Coastkeeper v. State Water Res. Control Bd.* (2018) 28 Cal. App. 5th 342, the Regional Board determined it was "necessary to allow time to achieve [the] water quality requirements," and the General Order includes "specific time schedule[s] and corresponding quantifiable milestones designed to measure progress towards reaching the specified requirements."[265] As explained in the Responses to Comments on the Draft Agricultural Order and the Findings, the General Order complies with Key Element 3 of the Nonpoint Source Policy because the terms and conditions of the General Order include timelines and quantifiable milestones to achieve the water quality requirements of not causing or contributing to exceedances of applicable water quality objectives; protecting beneficial uses; preventing nuisance; and achieving applicable TMDL load allocations.[266]

With respect to nitrates in groundwater, Table C.1-3 shows the timeline and quantifiable milestones as interim targets and limits applicable to individual Dischargers, by compliance pathway, and includes final nitrogen discharge limits that the Regional Board determined will not cause or contribute to an exceedance of the 10mg/L water quality objective for nitrate.[267] The General Order recognizes that "[t]he current average nitrogen waste discharge is approximately 340 pounds of nitrogen per acre per year" and in 2019, only 13% of ranches discharged nitrogen at the rate determined to be protective of the nitrate water quality objective, 50 pounds per acre per year or less.[268] Thus, immediate compliance by all Dischargers would not likely occur. For all compliance pathways, the General Order requires individual discharges to cease causing and contributing to exceedances of the nitrate water quality objectives by meeting the final limit by December 31, 2051. Decreasing interim discharge targets are established for the end of 2023 and 2025, and interim discharge limits that further decrease must be met by the end of 2027, 2031, 2036, 2041. The General Order includes this timeline to "to allow sufficient time for Dischargers to adapt and for

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[263] General Order, at p.42, AR0045; *see also* General Order, Attachment A, at p. 49, paragraph 147.a-b, AR0132.

[264] State Water Board Order WQ 2018-0002, at p.17 & fn.46, AR33521.

[265] General Order, Attachment A, at pp. 63–64, paragraph 195, AR146–147; NPS Policy, at p. 13, AR32832.

[266] General Order, Attachment A, at p. 44, paragraph 136.b, AR01128; *id.*, at p. 49, paragraph 147.c, AR0132; FEIR, vol. 3, at p. 3-749, AR2334 (Response to Comment BY-28).

[267] General Order, at p. 52, AR0055; *see also* General Order, Attachment A, at pp. 149–156, AR0232–AR0238 (describing rationale for final discharge limit).

[268] General Order, Attachment A, at p. 148, Table A.C.1-4 & paragraph 26, AR0231.

development of new and improved management practices and tools."[269] Specifically, the Central Coast Water Board found:

> Current management practices that constitute existing BPTC may not be capable at this time of achieving water quality objectives expressed as final numeric targets and limits required by this Order. However, the phasing-in of more stringent numeric targets and limits over time per the schedules prescribed in the Order is intended to allow for ongoing research, testing, and advancement of new or improved management practices that will ultimately be able to achieve the numeric targets and limits. In addition, the Order's monitoring and reporting requirements are intended to evaluate the effectiveness of management practices and their implementation.[270]

Accordingly, the timeline for meeting interim nitrogen discharge targets and limits established in the General Order is reasonable, and the environmental petitioners fail to demonstrate otherwise.

For Dischargers participating in the third-party alternative compliance pathway for groundwater protection, the General Order provides that the rate at which nitrogen discharge will not cause or contribute to exceedances of the nitrate water quality objectives and the deadline to achieve that rate will be determined in workplans prepared by a 3P-ACP administrator on behalf of Dischargers.[271] In addition to this collective numeric final target, the workplans will also establish collective numeric interim discharge targets. Dischargers participating in in the third-party alternative compliance pathway are also subject to decreasing individual nitrogen discharge targets and dates by which to meet the targets in Table C.2-2. These timelines are expected to correspond to the time period over which the collective numeric targets are being developed to ensure individual progress pending the development of the workplans.

The General Order provides an early and incremental process for developing and approving the workplans that allows opportunities for public participation and input from the Regional Board.[272] The Nonpoint Source Policy does not prohibit a 3P-ACP administrator from developing the interim and final targets, or the timeframe to meet the targets, and the environmental petitioners do not support their claim that an entity other than the Regional Board may not develop the timelines and quantifiable milestones. It is appropriate for the workplans required by the General Order and that contain the timelines and quantifiable milestones to be prepared by a third-party, with opportunity

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[269] FEIR, vol. 3, at p. 3-749, AR2334 (Response to Comment BY-28).

[270] General Order, Attachment A, at p. 74, paragraph 235, AR0157.

[271] General Order, at p. 34, AR0037.

[272] *Id.*, at p. 33, paragraph 14, AR0036.

for public review and comment, Regional Board consideration, and Executive Officer approval. Further, if Participating Dischargers do not meet the interim and final targets of the approved 3P-ACP workplan, the General Order includes provisions that may require Dischargers to instead comply with the individual interim and final targets and limits established in the Order.[273]

All Dischargers must comply with surface receiving water limits. Because the limits are based on either water quality objectives or load allocations for waterbodies and pollutant combinations with total maximum daily loads, a Discharger that complies with the surface receiving water limits will comply with the water quality requirement not to cause or contribute to an exceedance of the water quality objectives as well as the requirement to achieve applicable load allocations. The General Order establishes compliance dates for the surface receiving water limit in Tables C.3-2 through C-3.7. All Dischargers must prepare and submit follow-up surface receiving water implementation workplans developed either individually or through a third-party program that include "[n]umeric interim quantifiable milestones to confirm progress is being made to reduce the discharge of relevant constituents and achieved the numeric limits established in the Order, consistent with their time schedule."[274] As discussed above, it is appropriate for the follow-up surface receiving water implementation workplans to be prepared by a third-party administrator on behalf of its Dischargers.

Finally, although the Nonpoint Source Policy states that a time schedule to achieve the water quality requirements may not be longer than that which is reasonably necessary, the Central Coast Water Board has demonstrated that the time schedules set in the General Order are reasonably necessary. The 30-year timeline represented by the 2051 deadline to meet the nitrogen discharge targets and limits is extensively considered in the findings of the General Order and is additionally consistent with the State Water Board resolution approving the Central Valley Regional Water Quality Control Board's CV-Salts Basin Plan amendments and establishing a time frame of no longer than 35 years for dischargers in the central valley region to cease causing or contributing to exceedances of the nitrate objectives in groundwater.[275] With regard to the surface water quality objectives, the General Order establishes surface receiving water limits with compliance deadlines that reflect the dates by which discharges must not cause or contribute to exceedances of applicable water quality objectives. Many of the deadlines express TMDL implementation schedules established in the Basin Plan or through reestablishment of single-action TMDLs, but the Central Coast Water Board also determined that the deadline for compliance with the surface receiving water limits should be no earlier than December 31, 2032. The Regional Board found that an 11-

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[273] *Id.*, at p. 33, paragraphs 11–13, AR0036.

[274] General Order, Attachment B at 25–26, paragraphs 13–15, AR0409–AR0410; *see also* General Order, Attachment A, at pp. 39–41, paragraphs 18–19, AR0042–AR0044.

[275] State Water Board Resolution No. 2019-0057, Approving Amendments to the Water Quality Control Plans for the Sacramento River and San Joaquin River Basins and the Tulare Lake Basin to Incorporate a Central Valley-Wide Salt and Nitrate Control Program, at p. 9.

year timeline was necessary to "allow Dischargers to implement and adapt their management practices through increasingly more effective and innovative methods to achieve the TMDL load allocations, expressed as limits in this Order."[276] For numeric limits not based on a TMDL, the Central Coast Water Board established an 11-year timeline to comply with the surface receiving water limits after considering the average attainment schedules to achieve existing load allocations for nutrients, pesticides, and toxicity. The Regional Board explained, "This time schedule is reasonable given the similarity to TMDL attainment schedules, the degree of impairment to surface water quality and impacts on aquatic life beneficial uses, and the fact that agricultural orders regulating agricultural discharges have been in place since 2004."[277]

Environmental petitioners' argument that these timelines accommodate the "worst polluting permittees," while ignoring the fact that many Dischargers already meet certain interim milestones, is a gross minimization of the complexity and enormity of the changes that must be implemented over the next few decades to ensure agricultural discharges are not causing or contributing to exceedances of water quality objectives. For example, although nearly two thirds of Dischargers currently meet the 300 pounds per acre per year nitrogen discharge rate under Compliance Pathway 1 that will become effective in 2027 or 2028, the remaining Dischargers who do not meet the discharge rate will undergo education and training, and require technical support to implement new and costly practices for complex, multi-crop rotations. Moreover, looking at the longer timeline, only approximately 10% of Dischargers are estimated to currently meet the 50 pounds per acre per year nitrogen discharge rate.[278]

Further, the Nonpoint Source Policy allows a Regional Board to amend time schedules if it determines that more time is needed.[279] Consistent with Water Code section 13263(e), the General Order includes a provision at paragraph 32, page 15, describing annual updates the Central Coast Water Board will receive to evaluate the effectiveness of the General Order.[280] A stated purpose of the updates is to "consider potential Order modifications as may be appropriate at five-year intervals." [281]

C. Feedback Mechanisms (CCA Petition, p. 16)

The environmental petitioners contend that "[t]he Regional Board's feedback mechanisms are insufficient to allow it to track progress," in violation of Key Element 4

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[276] General Order, Attachment A, at pp. 37–38, paragraph 120, AR0120–AR0121.

[277] *Id.*, at pp. 177–178, AR0260–AR0261; *id.* at pp. 193–194, AR0276–AR0277; *see also id.*, at p. 201, paragraph 148, AR0201 (turbidity).

[278] *Id.*, at p. 148, Table A.C.1-4, AR0231.

[279] NPS Policy, at p. 13, AR32832.

[280] General Order, at p.15, AR0018.

[281] *Id.*

in the Nonpoint Source Policy.[282] In particular, the environmental petitioners allege that "[t]he current spatial density of monitoring is inadequate and does not allow the Regional Board to determine trends or efficacy of management practices. . . ." and "results of the [existing] monitoring regime have demonstrated that the Reginal Board is not doing enough." [283] The Central Coast Water Board disagrees with this contention.

The Nonpoint Source Policy requires nonpoint source control implementation programs to "include sufficient feedback mechanisms to determine if the program is achieving its stated purpose."[284] The Nonpoint Source Policy construes "feedback mechanisms" to include reporting, inspection, and monitoring.[285] For surface water feedback mechanisms, the State Water Board has stated that it is appropriate to use cooperative or watershed-based monitoring and for "third-party monitoring groups administering receiving water monitoring to pursue exceedances with increasingly focused monitoring in upstream channels designed to narrow down and identify the sources of the exceedances."[286] As stated in the permit's findings, the General Order includes the following monitoring and reporting requirements to measure compliance:

> i. Monitoring and reporting of nitrogen applied (A) and nitrogen removed (R) are submitted through the INMP report. The nitrogen applied data will be used to determine compliance with the nitrogen application limits. The nitrogen removed data will be used to calculate nitrogen applied minus nitrogen removed (A-R) to determine compliance with the nitrogen discharge limits. Irrigation well monitoring and reporting is included because the amount of nitrogen applied with the irrigation water is part of the calculation of nitrogen applied minus nitrogen removed.
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> ii. The groundwater quality trend monitoring and reporting requirement will allow the regional board to assess the effectiveness of this Order's requirements at improving groundwater quality over time. Domestic well monitoring and reporting will also allow the regional board to assess the effectiveness of this Order's requirements at improving groundwater quality over time, as well as help ensure that public health is being protected in the interim by ensuring that

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[282] CCA Petition, at p. 16.

[283] *Id.*, at p. 16.

[284] *Monterey Coastkeeper v. State Water Resources Control Board* (2018) 28 Cal.App.5th 342, 367; *see also* NPS Policy, at p. 13, AR32832.

[285] NPS Policy, at p. 13, AR32832.

[286] State Water Board Order WQ 2013-0101, pp. 37–38, AR32954–AR32955, *quoted in* State Water Board Order WQ 2018-0002, p. 54, AR33558; *see also* State Water Board Order WQ 2018-0002, p. 54 fn.137.

> domestic well users are aware of the nitrate concentration of their well water, the health concerns associated with elevated nitrate levels, and allow the regional board to coordinate replacement water efforts where necessary.
>
> iii. Surface water monitoring and reporting will allow the regional board to assess whether the receiving water limits for nutrients, pesticides, toxicity, and turbidity are being achieved in surface waters and will allow the regional board to continue to assess and understand long-term trends in surface water quality by continuing the existing monitoring program. In the event that the surface receiving water limits are not achieved in compliance with their time schedules, ranch-level surface discharge monitoring and reporting will allow the regional board to assess whether Dischargers are complying with the surface discharge limits for nutrients, pesticides, toxicity, and turbidity.
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> iv. The annual compliance form (ACF) includes monitoring and reporting of elements of the INMP, PMP, and SEMP, including management practices. This monitoring and reporting will allow the regional board to assess whether Dischargers are implementing additional management practices over time.[287]

Fertilizer nitrogen application targets and limits, as applicable to the Discharger depending on participation in the 3P-ACP program, are assessed annually for each specific crop reported in the TNA report or INMP Summary Report. Compliance with nitrogen discharge targets and limits, as applicable, are assessed annually for the entire ranch using INMP summary report information.[288] For Dischargers participating in the 3P-ACP program, the General Order requires that "GWP areas, formula, values, and collective interim and final targets must be tied together and scaled in a way that will allow for the effective evaluation of water quality and beneficial use protection and compliance with GWP interim and final targets on both a collective and individual basis."[289] As previously stated, this approach for GWP areas, formulas, values and interim and final targets is consistent with the State Water Board's ESJ Order.

The General Order requires all Dischargers to conduct groundwater quality trend monitoring and reporting, which is intended to provide sufficient spatial and temporal scales to evaluate the effectiveness of the General Order's groundwater protection

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[287] General Order, Attachment A, at p. 45–46, AR0128–AR0129.

[288] General Order, at p. 23, paragraph 9–10, AR0026; *id.*, at pp.32–33, paragraph 9, AR0035–AR0036.

[289] *Id.*, at p. 35, paragraph 15.b, AR0037.

requirements.[290] For Dischargers that are not members of a 3P-ACP program, ranch-level groundwater discharge monitoring and reporting is a potential consequence for bringing Dischargers into compliance with the targets and limits.[291] Ranch-level groundwater discharge monitoring and reporting, when required, will provide increased resolution of water quality conditions at the ranch scale and can be used to inform more effective management practices.

As to surface water protection, the General Order requires all Dischargers to conduct surface receiving water monitoring and reporting as described in the Monitoring and Reporting Program. The surface receiving water quality trends monitoring requirement mandates that Dischargers development and implement an Executive Officer-approved work plan that includes monitoring sites "to evaluate receiving water quality impacts most directly resulting from areas of irrigated agricultural discharge (including areas receiving tile drain discharges). Site selection must take into consideration the existence of any long-term monitoring sites included in related monitoring programs (e.g., Central Coast Ambient Monitoring Program (CCAMP) and the existing third-party monitoring program). Sites may be added or modified, subject to prior approval by the Executive Officer, to better assess the pollutant loading from individual sources or the impacts to receiving waters caused by individual discharges."[292] Additionally, "[t]he work plan must include a schedule for sampling. Timing, duration, and frequency of monitoring must be based on the land use, complexity, hydrology, and size of the waterbody."[293] Dischargers who exceed surface receiving water limits may be required to conduct ranch-level surface discharge monitoring and reporting.[294]

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[290] *Id.*, at p. 30, paragraph 32, AR0033; General Order, Attachment B, at p. 15, paragraph 17, AR0399. The MRP states:

> The objectives of groundwater quality trend monitoring and reporting are as follows:
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> a. To evaluate the status of groundwater quality over time, including whether groundwater quality objectives are attained, and beneficial uses are protected.
>
> b. To quantitatively evaluate the impact of irrigated agricultural waste discharges to groundwater.
>
> c. To evaluate short-term patterns and long-term trends (five to ten years or more) in groundwater quality.

General Order, Attachment B, at p. 15, paragraph 17, AR0399.

[291] General Order, at p. 30, paragraph 33, AR0033.

[292] General Order, Attachment B, at pp. 23–24, paragraph 6, AR0407–AR00408.

[293] *Id.*, at p. 24, paragraph 8, AR00408.

[294] General Order, at p. 39, paragraph 17, AR0042. Prior to the compliance dates for the surface receiving water limits, "Dischargers who elect to participate in a third-party program to develop and implement their work plan will not be subject to ranch-level surface discharge monitoring and reporting." *Id.*, at p. 39, paragraph 19.d, AR0042.

The monitoring requirements described above are not the only feedback mechanisms in the General Order. The follow-up surface receiving water implementation workplan beginning at page 25, paragraph 13, of the Monitoring and Reporting Program and the potential consequence of increased monitoring and reporting upon failure to achieve nitrogen discharge targets and limits also serve as feedback mechanisms.[295] The Central Coast Water Board described this in its Response to Comments on the Draft Agricultural Order, explaining that "[t]he workplan is designed to, among other things, identify and abate the source of water quality impacts and identify additional monitoring and reporting. Based on water quality data obtained, the Executive Officer will require additional monitoring sites be added to the workplan to further evaluate the waterbody."[296]

Finally, in response to comment BY-32 made by some of the environmental petitioners stating that the General Order "must contain an explicit commitment to ongoing evaluation of data and must provide opportunities to modify the plan's design elements where feedback mechanisms show the plan is not working,"[297] the adopted General Order includes a provision at paragraph 32, page 15, describing annual updates the Central Coast Water Board will receive to evaluate the effectiveness of the General Order.[298]

The General Order complies with the Nonpoint Source Policy because the monitoring and reporting requirements provide adequate feedback mechanisms that work together with other General Order requirements, such as the consequences for exceeding targets and limits described below, to ensure that beneficial uses are protected, water quality objectives are not exceeded, and nuisance does not occur from waste discharges from commercial irrigated agricultural operations.

D. Potential Consequences (CCA Petition, pp. 17-18)

The environmental petitioners contend that the General Order falls short of satisfying Key Element 5 of the Nonpoint Source Policy. The crux of the meandering arguments supporting this contention is that the General Order does not have consequences, shields Dischargers participating in a third-party program from enforcement, and "delegate[s] responsibility for developing consequences for follow-up programs" to third-party programs.

The Regional Board disagrees with this contention. The Nonpoint Source Policy requires each Regional Board to "make clear, in advance, the potential consequences

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[295] General Order, Attachment C, at pp. 25–26, AR0409–AR0410.

[296] FEIR, vol. 3, at pp. 3-749–3-750, AR2334–AR2335 (referring to the follow-up surface receiving water implementation workplan as designed to "assess the impact of irrigated agricultural waste discharges on receiving water" as a feedback mechanism).

[297] *Id.*, vol. 3, at p. 3-712, AR2297.

[298] General Order, at p.15, AR0018.

for failure to achieve an NPS control implementation programs stated purposes." The General Order meets this requirement by clearly stating the potential consequences if a Discharger fails to meet the nonpoint source program components, that is, the permit requirements. These potential consequences are summarized in the Findings as follows:

> [E]ach program element describes potential consequences for failure to achieve compliance with the numeric application and discharge targets and limits, and receiving water limits. The consequences for failure to achieve application and discharge targets include (1) participation in additional education, (2) updating of the Farm Plan with additional or improved management practices designed to achieve the targets and subsequent reporting on the updated practices in the Annual Compliance Form, (3) professional certification of the Irrigation and Nutrient Management Plan, and (4) increased monitoring and reporting obligations, including ranch-level discharge monitoring. For Dischargers participating in third-party alternatives, sustained failure to achieve targets results in loss of third-party program membership, such that the discharger must immediately comply with the individual targets and limits on a more aggressive schedule. The consequences for failure to achieve discharge limits and receiving water limits may result in all of the same consequences and additionally may be enforced as an order violation. Enforcement of this Order will be conducted consistent with the State Water Board's Enforcement Policy. The Central Coast Water Board will also periodically review the Order as described in the Order Effectiveness Evaluation of the Order, Part 1, Section A.[299]

These potential consequences are set forth in the General Order on page 27, paragraph 19 (nitrogen discharge targets) and paragraph 20 (nitrogen discharge limits);[300] page 32, paragraphs 7 and 8 (nitrogen application targets, 3P-ACP);[301] page 33, paragraphs 11, 12, and 13 (nitrogen discharge targets, 3P-ACP);[302] page 35, paragraphs 19 and 20 (groundwater protection interim and final targets, 3P-ACP);[303] page 39, paragraph 17 (surface receiving water limits); and page 41, paragraphs 19.f (surface receiving water limits, individual work plan) and paragraph 20 (surface

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[299] General Order, Attachment A, at p. 46, AR0129; *see also* Responses to Comments, RAO, at p. 8, AR16534 (summarizing third-party alternative compliance pathway consequences).

[300] General Order, at p.27, AR0030.

[301] *Id.*, at p. 32, AR0032.

[302] *Id.*, at p. 33, AR0036.

[303] *Id.*, at p.35, AR0038.

receiving water limits).[304] The General Order also clearly states that a potential consequence of exceeding the permit limits and other requirements is enforcement under the Water Code.[305] Accordingly, any Discharger that exceeds the surface receiving water limits, including a participant in a third-party program may be subject to enforcement for the permit violation. The environmental petitioners' argument that a Discharger's participation in a 3P-ACP for groundwater protection will shield the Discharger from the threat of enforcement also lacks merit.[306] Repeated failure to meet nitrogen application and discharge targets results in ineligibility to remain in the 3P-ACP program, immediately subjecting the affected Discharger to individual requirements, including enforceable limits, once effective.[307]

It is unclear what the environmental petitioners' argument that "third party programs are delegated responsibility for developing consequences for follow-up programs in violation the Nonpoint Source Policy" is specifically addressing.[308] Although the third-party program administrator is proposing components of workplans, such as follow-up actions or consequences, that it submits on behalf of its members, the work plans must be approved by the Regional Board's delegee, the Executive Officer, prior to implementation.[309] The follow-up surface receiving water implementation work plan may be further reviewed by the Central Coast Water Board.[310] The General Order also requires Dischargers participating in an approved third-party compliance pathway program, through their program administrator, to develop and submit work plans related to groundwater protection areas, formulas, values, and targets. Like the follow-up surface receiving water implementation work plan, the specific follow-up actions and consequences the third party administrator will implement if a Discharger fails to meet the collective numeric targets is currently unknown, but the final workplan, including these components, must be approved by the Executive Officer.[311] Moreover, the workplan will be developed incrementally, with opportunity for written comments and public and Regional Board input at a public meeting.[312] In all cases, the specific consequences in the workplans will be approved by the Executive Officer prior to their implementation.

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[304] *Id.*, at p. 41, AR0044.

[305] *Id.*, at p. 14, AR0017.

[306] CCA Petition, at p. 18.

[307] General Order at pp. 32, 33, AR0035, AR0036.

[308] CCA Petition, at p. 18.

[309] *E.g.,* General Order, at p. 40, paragraph 19.c, AR0043 (follow-up surface receiving water implementation work plan); *id.* at 33, AR0036 (work plan for groundwater protection areas, formulas, values, and targets).

[310] *Id.*, at p. 16, AR0019.

[311] *Id.*, at p. 33, AR0036.

[312] *Id.*

The environmental petitioners assert that the General Order "does not honor consequences previously articulated by Water Boards related to nonpoint source pollution and policy" but does not identify which consequences the Central Coast Water Board purportedly "does not honor" in the nonpoint source pollution control program implemented through the General Order.[313] Moreover, it is unclear why the Central Coast Water Board would be bound to "honor" consequences articulated by another Water Board, presumably in that other Water Board's nonpoint source pollution control program. The Central Coast Water Board therefore disagrees with the environmental petitioners' assertion. Moreover, the General Order differs significantly from the Central Coast Water Board's prior permits regulating commercial irrigated agriculture by establishing numeric targets and limits that Dischargers must attain or be subject to the follow-up consequences described above. Numeric targets and limits, which are tied to groundwater and surface water quality objectives (or load allocations in TMDLs) and did not exist in earlier orders, provide clear benchmarks that not only trigger follow-up actions but also serve to evaluate the effectiveness of Discharger-implemented management practices. Indeed, the implementation of TMDL load allocations in the General Order stands in stark contrast to its predecessor order, which implemented TMDL load allocations through a permit condition that permittees would "comply with applicable Total Maximum Daily Loads (TMDLs) through compliance with this Order" and did not otherwise impose deadlines related to TMDL load allocations.[314] The Central Coast Water Board addresses its authority to establish, within the General Order, final compliance deadlines with TMDL load allocations, in response to Contention CCA-6. The terms and conditions in the General Order clearly result in "increased direct accountability" of individual Dischargers that the environmental petitioners claim is lacking.[315]

Contention CCA-2: The General Order is not consistent with the anti-degradation policies. (CCA Petition, pp. 18-21)

Response CCA-2: The Central Coast Water Board does not agree with this contention. The General Order includes an extensive and thorough antidegradation analysis in Attachment A, Section B, Findings 163 through 238, with the core of the required analysis summarized at Findings 194 through 198.[316] The antidegradation analysis is consistent with State Water Board Resolution 68-16, Statement of Policy with Respect to Maintaining High-Quality Waters (State Antidegradation Policy), 40 C.F.R. section 131.12, where applicable (Federal Antidegradation Policy), and *Associacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board* (2012) 210 Cal.App.4th 1255 (*AGUA)*, including *AGUA*'s interpretation of two internal State Water Board documents, Administrative Procedures Update 90-004 (APU 90-004) and Questions and Answers, Resolution No. 68-16 (Resolution No. 68-16 Guidance

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[313] *See* CAA Petition, at p. 17.

[314] Order No. R3-2017-0002, at p. 17, paragraph 17.

[315] CAA Petition, at p. 17.

[316] General Order, Attachment A, at pp. 54–73, paragraphs 163–238, AR0137–AR0156.

Memorandum). The antidegradation analysis is also consistent with State Water Board Order 2018-0002 (ESJ Order), which is the State Water Board's most recent precedential direction on conducting an antidegradation analysis for a nonpoint source permit.

This response does not restate the antidegradation analysis of the General Order but responds to the specific arguments made by environmental petitioners.

CCA Argument: The antidegradation findings on BPTC fail to consider relevant methods used by similarly situated dischargers to manage pollution.

The environmental petitioners appear to be arguing that the fact that many Dischargers currently discharge at or below 300 pounds per acre per year, have limited pesticide use, or include on farm riparian and operation setbacks, renders the General Order's best practicable treatment or control (BPTC) analysis inadequate. Relying on *AGUA*'s reference to the Resolution No. 68-16 Guidance Memorandum's definition of BPTC,[317] the environmental petitioners argue that the analysis in the General Order should have concluded that these "feasible alternative methods of pollution control" are BPTC and must be implemented by all Dischargers to control any degradation, given that "similarly situated" Dischargers are in fact implementing them successfully to minimize degradation.[318]

The Central Coast Water Board does not disagree with the environmental petitioners that these types of measures constitute BPTC. In fact, the BPTC findings discuss numeric application and discharge targets and limits and receiving water limits, as well as a set of practices that may be implemented to achieve these limits, including vegetative buffers.

Where the Central Coast Water Board and environmental petitioners differ is the timing of implementation of targets, limits, and management practices. The environmental petitioners appear to suggest that if some Dischargers can implement management practices to meet targets and limits now, a BPTC analysis demands that all Dischargers should be required to do so, without the benefit of the time schedules for compliance built into the General Order. But the law does not require immediate cessation of discharges that contribute to an exceedance in the waterbody or contribute to degradation of a high-quality water body. Water Code section 13263, subdivision (c), authorizes Central Coast Water Board to include a time schedule for achieving water quality objectives in waste discharge requirements. The Nonpoint Source Policy similarly acknowledges that time schedules may be built into a permit regulating nonpoint source pollution.[319] Additionally, for surface water discharges, some of the

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[317] *AGUA*, 210 Cal App. 4th at p. 1282.

[318] General Order, Attachment A, at 73–74, paragraphs 231–238, AR0156–AR0157.

[319] NPS Policy, at p. 13, AR32832.

compliance schedules are tied to TMDL implementation schedules in the Basin Plan.[320] Nothing in the antidegradation policies overrides the Central Coast Water Board's authority in the Water Code, in applicable policies, and in its Basin Plan, to require compliance with targets, limits, and management practices to achieve those targets and limits through a compliance schedule. The Central Coast Water Board's decision to do so was reasonable, as discussed further below and in response to Contention CCA-1, subsection B.

CCA Argument: The General Order improperly allows degradation to occur going forward in furtherance of an illegitimate status quo for farming practices.

As the Central Coast Water Board understands this argument, environmental petitioners assert that because under past agricultural permits actual degradation may have exceeded degradation allowed under applicable findings, the antidegradation analysis in the General Order is flawed when it uses the status quo of the existing degradation as a reference point. This approach, the environmental petitioners contend, in effect codifies the existing level of pollution as an acceptable standard.

The Central Coast Water Board recognizes that degradation of high quality waters in the region occurred under prior permits and before permits were issued to the agricultural sector. Far from taking the existing degradation as its reference point, the antidegradation analysis of the General Order finds that the historic baseline must be considered:

> While degradation permitted by prior regional board action may reset the baseline, the degradation must have occurred consistent with appropriate antidegradation findings. Unfortunately, this has not occurred in some situations for controllable pollutants. In many areas of the state, unpermitted discharges of controllable pollutants have already degraded or polluted high-quality water and associated beneficial uses . . . . As part of the Agricultural Order 3.0 adoption process, the Central Coast Water Board conducted a general baseline water quality analysis for the region and determined that many of the water bodies were in or at one time since 1968 high quality with regard to the constituents found in agricultural discharges. Those findings are incorporated herein.[321]

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[320] Where a TMDL has been established, Water Code section 13242 states that the TMDL implementation plan, as incorporated into the water quality control plan, shall include a time schedule for actions to be taken. When issuing waste discharge requirements, Water Code section 13263 requires regional boards to implement any relevant water quality control plans that have been adopted. Some of the TMDLs in the General Order are established as single regulatory actions and not as Basin Plan Amendments. See response to Contention CCA-6.

[321] General Order, Attachment A, at p. 60, paragraphs 182–183, AR0143.

As previously discussed, the General Order is not a cleanup and abatement order for restoration of the region's water bodies but a permit regulating the current discharges from irrigated agricultural activities. The antidegradation analysis necessarily focuses on whether the ongoing discharges permitted by the General Order will cause degradation of the region's water bodies. In conducting the analysis, the General Order measures that degradation with reference to historic water quality levels of the water bodies, but the analysis can only address the control of ongoing discharges. The maximum benefit analysis in the General Order thus looks at the targets, limits, management practices, monitoring and reporting requirements, and compliance schedules required in the Order and asks and tries to answer the question of whether incorporating those requirements, as opposed to less or more stringent measures or compliance schedules, is to the maximum benefit of the people of the state.

The exercise environmental petitioners appear to demand is that the Central Coast Water Board disregard actual, ongoing discharges, and the costs associated with changing those discharges, in favor of an analysis that imagines improved discharges that may have been achieved had the Regional Board required a more stringent set of controls and practices the past. This exercise is not required by the antidegradation policies – the environmental petitioners do not support the contention with any legal authority – and it is entirely impractical. The Regional Board is tasked with determining the benefits to the people of the state that stem from a thriving agricultural industry in the central coast region, considering the potential diminishment of the agricultural industry in the region that may occur through the General Order's imposition of a set of requirements on Dischargers in furtherance of achieving a prescribed water quality result. The Regional Board must weigh those benefits against the cost to the people of the state of not achieving a better water quality result or, as here, not achieving a water quality result more quickly. In doing so, the Central Coast Water Board may be required to measure the permitted degradation with reference to historic water quality, but nothing in the law demands the hypothetical dive the environmental petitioners propose into controls and practices that may have or should have been implemented in the past under hypothetical more stringent permits that may or should have been issued. The Central Coast Water Board's maximum benefit findings considered the appropriate factors and are reasonable.[322]

CCA Argument: The General Order maximum benefit analysis is flawed because it is based on cost savings for a subset of dischargers and because the cost analysis failed to consider the costs of not protecting and restoring water quality objectives.

The environmental petitioners' argument here is a variation on the argument made above with regard to BPTC: Many Dischargers are already meeting the first set of targets and limits that are required by the General Order, such that it is only a subset of

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[322] *See* General Order, Attachment A, at pp. 63–65, paragraphs 194–198, AR0146–AR0148; *see also id.*, at pp. 65–73, paragraphs 199–230, AR0148–AR0156.

the Dischargers that will be incurring the costs to implement new management practices.

The environmental petitioners argue that cost savings to a subset of Dischargers is not an appropriate consideration for a maximum benefit analysis. The environmental petitioners cite to the Resolution No. 68-16 Guidance Memorandum for the proposition that cost savings to the Discharger, "standing alone absent a demonstration of how these savings are necessary to accommodate important social and economic development are not adequate justification for allowing degradation."[323]

The Central Coast Water Board agrees with this proposition, but it is not relevant to the analysis in the maximum benefit findings of the General Order. The General Order's maximum benefit findings consider the collective impact to the agricultural industry in the central coast region of imposing the new requirements. For example, it is true that two thirds of Dischargers are already meeting the nitrogen discharge limits that will be required in 2027, but fewer than half are meeting the next limit, and fewer than one sixth meet the 50 pounds per acre limit projected to be necessary to not cause or contribute to exceedances of the nitrate objectives in groundwater.[324] To the extent the environmental petitioners' point is that the 300 pounds per acre per year limit should have been imposed immediately, rather than in several years, the Central Coast Water Board does not agree that doing so would lead to an immediate water quality benefit that is significant enough to change the maximum benefit considerations in the antidegradation analysis. Some Dischargers will be able to respond quickly, but the evidence in the record suggests that many of the Dischargers not currently meeting the 300 pounds per acre per year limit will need to participate in training and adjust practices over several years to meet the targets even if the limit becomes effective immediately.[325]

The environmental petitioners' additional contention that the maximum benefit analysis ignores the costs of not protecting and restoring water quality objectives is simply

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[323] Questions and Answers Resolution No. 68-16 (1995), at p. 5, AR32791, citing State Water Board Order No. 86-17, at p. 22, fn. 10.

[324] The percentages are available as of 2019. *See* General Order, Attachment A, at p. 148, Table A.C.1-4, AR0231.

[325] *See*, *e.g.*, Central Coast Water Quality Preservation, Inc. Written Comment Received Feb. 25, 2021, Attachment 1, at p. 5, AR11575 ("When growers cannot immediately comply with Targets, it is *critical* that they have sufficient time to engage in a third-party follow-up program so as to identify, effectively implement, and document management changes, which can take many growing seasons to dial in."); Response to Comments, RAO, at p. 23, AR16549 (Master Response 3.2) (explaining that the General Order has to "strike[] a balance between providing enough time for the development of third-party programs and management practice innovation required to effectively reduce nutrient pollution and expeditiously addressing the pollution problem"); General Order, Attachment A, at pp. 37–38, paragraph 120, AR0120–AR0121 (stating that "time is needed to allow Dischargers to implement and adapt their management practices through increasingly more effective and innovative methods" to achieve surface water limits).

incorrect. Findings 203 through 238[326] analyze the social and environmental costs associated with degradation and impairment due to agricultural discharges.

CCA Argument: The General Order and its findings are not consistent with the findings of the antidegradation analysis.

- *The antidegradation analysis concludes that the permit must protect and restore all water quality objectives and beneficial uses. However, the 2021 Order's findings do not conclude that it will accomplish these things.*

The Central Coast Water Board addresses this argument in response to Contention CCA-1, subsection A. Finding 162 of the General Order specifically concludes: "For all the reasons stated above, the Central Coast Water Board finds that there is a high likelihood that this Order will achieve the program's ultimate purpose of preventing exceedances of water quality objectives and protecting beneficial uses."[327]

- *The Regional Board's antidegradation analysis repeatedly asserts that degradation authorized is reversible but has not demonstrated that degradation will be reversible.*

Petitioners misrepresent the Central Coast Water Board's position. The antidegradation findings in the General Order state as follows:

> The Central Coast Water Board anticipates that the management practices implemented to comply with the numeric targets and limits of the Order will also prevent degradation of high-quality waters over time. The Central Coast Water Board cannot find, however, that there will be no degradation of high-quality waters under the requirements of this Order. In particular, the Central Coast Water Board anticipates degradation of some high-quality waters during the period of time that Dischargers are working in accordance with time schedules described in this Order to achieve compliance with numeric targets and limits via the implementation of management practices. As appropriate controls and management practices are implemented in accordance with time schedules, the degradation is expected to be limited and, in many cases, reversible. *In some cases, the Central Coast Water Board anticipates that, over time, impaired water bodies that were historically high quality can be improved to water quality better than the objectives. In other cases, such as groundwater basins that were historically high-quality but are now impaired for nitrates, the degradation,*

[326] General Order, Attachment A, at pp. 66–74, paragraphs 203–238, AR0149–AR0157.

[327] *Id.*, at p. 54, paragraph 162, AR0137.

> *up to the objectives, may be long-term*. *In these latter cases, the Order authorizes degradation only up to the level of the objectives* and requires implementation of controls and compliance with targets and limits such that agricultural discharges will over time not cause or contribute to exceedances of the objectives. While the Central Coast Water Board makes findings below authorizing degradation of high-quality waters under this Order, the Central Coast Water Board will, wherever feasible, require controls to prevent and reverse degradation by working with dischargers and third parties to ensure controls are implemented in an iterative manner as technology evolves and advances.
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> []The Central Coast Water Board finds that allowing degradation of high-quality waters that is unavoidable or irreversible even with successful implementation of and compliance with the conditions of this Order, as periodically revisited and amended by the Board, is consistent with maximum benefit to the people of the state.[328]

Thus, contrary to environmental petitioners' contention, the antidegradation findings acknowledge that the controls imposed on agricultural discharges through the General Order may not restore historically high quality, but currently impaired, water bodies to levels better than the objectives. The Central Coast Water Board explicitly finds that degradation in those cases up to the objectives is consistent with the maximum benefit to the people of the state. To be sure, the Central Coast Water Board's goal is to reverse degradation wherever feasible, in addition to ensuring that discharges do not cause or contribute to exceedances of water quality objectives, but the antidegradation analysis does not pivot on that assumption.

- *The antidegradation findings mention aquatic life beneficial uses in passing, but do not analyze the potential irreversible impacts on these beneficial uses in particular.*

The maximum benefit analysis considers the costs to the people of the state associated with degradation that may impact aquatic life in less detail than costs associated with drinking water impacts. But it is incorrect that it does not consider the impacts. Specifically, the General Order's findings state as follows:

> Similarly, for surface waters, many studies have documented that toxicity resulting from agricultural waste discharges of pesticides has significantly impacted aquatic life in central coast streams (Anderson et al., 2003a; Anderson et al.,

[328] *Id.*, at p. 64, AR0147, paragraphs 196–197 (emphasis added).

> 2003b, Anderson et al., 2006a; Anderson et al., 2006b; Anderson et al., 2010). Recently, a collaborative study of the Central Coast Water Board's Central Coast Ambient Monitoring Program (CCAMP), Department of Pesticide Regulation (DPR) and the Granite Canyon Marine Pollution Studies Laboratory documented toxicity in the Santa Maria and Salinas watersheds resulting from the agricultural use of a broad suite of pesticides.
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> . . .
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> Agricultural discharges also impact beneficial uses protecting aquatic life, wildlife habitat, and rare, threatened, and endangered species habitat. Impacts on these beneficial uses have costs that are difficult to quantify, but impact users of the waterbodies, including the agricultural growers, as well as residents, recreators, and visitors. Because the Order does not authorize degradation below applicable objectives that have been developed to protect these beneficial uses, the costs associated with impacts on the beneficial uses through exceedances of the objectives are addressed through other provisions of the Order. Where waterbodies are currently impaired, the Order requires compliance with receiving water limitations protective of the beneficial uses in accordance with a compliance schedule, including but not limited to limits for nitrate, ammonia, orthophosphate, diazinon, chlorpyrifos, and sediment. The Order prohibits disturbance of existing, naturally occurring, and established native riparian vegetative cover, unless authorized. Dischargers must avoid disturbance in riparian areas to minimize waste discharges and protect water quality and beneficial uses. In the case where disturbance of riparian areas is authorized, Dischargers must implement appropriate and practicable measures to avoid, minimize, and mitigate erosion and discharges of waste.[329]

The manner in which the General Order will protect aquatic beneficial uses is discussed in detail in response to Contention CCA-1, subsection A.

Contention CCA-3: The General Order does not adequately balance the human right to water (CCA Petition, pp. 21-22)

Response CCA-3: The Central Coast Water Board does not agree with this contention. The Central Coast Water Board has appropriately considered the human right to water. The human right to water is expressed in Water Code section 106.3 and further

[329] *Id.*, at pp. 63, 72–73, paragraphs 192, 230, AR0146, AR0155–AR0156.

addressed by the State Water Board in its Resolution No. 2016-0010 and the Central Coast Water Board in Resolution R3-2017-0004. Although Water Code section 106.3 does not apply to the issuance of permits, the Central Coast Water Board's resolution expresses the Regional Board's commitment to considering the human right to water in all activities that could affect existing or potential sources of drinking water, including permitting.[330] The General Order implements the Regional Board's Human Right to Water resolution by regulating waste discharges from irrigated agriculture, which has the potential to affect groundwater used for drinking water in the central coast region.[331] Specifically, the General Order addresses overapplication of fertilizer nitrogen and nitrogen discharges that may cause or contribute to the exceedance water quality objectives by setting targets and limits that become more stringent over time. Under the General Order, Dischargers must also develop and implement an Irrigation and Nutrient Management Plan (INMP). The portion of the INMP pertaining to groundwater protection must include "planning and management practice implementation and assessment that results in compliance" with the fertilizer nitrogen application and nitrogen discharge targets and limits and "[d]escriptions of all irrigation, nutrient, and salinity management practices implemented and assessed on the ranch."[332] The General Order "also requires monitoring of on-farm domestic wells and providing notification to the users of the wells of the results of the monitoring and of the health impacts associated with elevated nitrate concentrations in drinking water."[333]

The environmental petitioners further allege that the development of the General Order was unfair towards "lesser resourced-stakeholders, including low-income communities of color who are most negatively impacted by this pollution" because "the Regional Board allowed well-resourced dischargers and their representatives to profoundly alter the staff blueprint for the order through ex parte communications."[334] This allegation is both disingenuous and unfounded. Ex parte communications between interested persons and Regional Board members during the development of general waste discharge requirements such as the General Order are expressly permitted, subject to some limitations, under Water Code section 13287 and are a recognized tool available to all interested persons. In fact, the environmental petitioners also engaged in ex parte communications with Regional Board members while the General Order was pending.[335]

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[330] Resolution R3-2017-0004, AR33441; *see also* General Order, Attachment A, at p. 76, AR0159.

[331] General Order, Attachment A, at p. 76, AR0159.

[332] General Order, at p. 22, paragraph 6, AR0025; *id.*, at p. 31–32, paragraph 3, AR0034–AR0035

[333] General Order, Attachment A, at p. 76, AR0159.

[334] CCA Petition, at p. 22.

[335] *E.g.,* Disclosures of Ex Parte Communication, from Steve Shimek, The Otter Project, AR16865, AR16918, AR16919, AR16949, AR16956–AR16958, AR16969, AR16972, AR17000, AR17032–AR17038, AR17224, AR17258–17329, AR17377–18379; AR17606, AR17616–AR17618, AR17656–AR17662 ; Disclosure of Ex Parte Communication, from Ben Pitterle, Santa Barbara

Changes between an initial staff proposed permit and the final adopted permit are not unusual during the permit development process, and input from the public, which includes disclosed ex parte communications, informs the Regional Board's decision. The environmental petitioners do not provide specific examples demonstrating how the proceedings to adopt the General Order were inadequate, unfair, or otherwise irregular. The Water Code requires at least a 30-day public comment period prior to the adoption of waste discharge requirements.[336] The Bagley-Keene Open Meeting Act requires that the public be allowed to comment on agenda items at public meetings, and as described below, the Central Coast Water Board complied with this mandate.[337] There are no allegations that the comment periods were inadequate nor are there allegations that any individual or group was denied the opportunity to engage with the members of the Regional Board during a public meeting, nor is there any allegation of systemic denial of requests to engage in ex parte communications with individual Board members.

The administrative record overwhelmingly shows that the Central Coast Water Board complied with public participation requirements and provided ample opportunity for public input during the multi-year process to develop and ultimately adopt the General Order. The record also shows that the environmental petitioners as well as other individuals and organizations with environmental, environmental justice, or community interests engaged with the Central Coast Water Board through written comments when the Central Coast Water Board provided such opportunities on the staff conceptual options tables, the Draft Agricultural Order and the Revised Draft Agricultural Order, and through oral comments at public meetings.[338]

The proceedings involved significant discussion among the Regional Board members and between the Regional Board and its staff and interested persons during public meetings, in English and Spanish. Since September 2018, the Regional Board spent nearly 17 full days of meetings focused on developing the agricultural order as well as

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Channelkeeper, AR16964; Disclosures of Ex Parte Communications from Tyler Sullivan, California Coastkeeper Alliance, AR17664, AR17666. AR17668, AR17672, AR17674, AR17681, AR17684, AR17686.

[336] Wat. Code § 13167.5(a)(1).

[337] Gov. Code § 11125.7(a).

[338] Written comments received include: The Otter Project and California Coastkeeper Alliance Comments on Conceptual Options Tables, AR5715; Santa Barbara Channelkeeper Comments on Conceptual Options Tables, AR5801; California Coastkeeper Alliance, et al. Comments on Draft Agricultural Order, AR8954; California Coastkeeper Alliance, Santa Barbara Channelkeeper, and the Otter Project Comments on Draft Agricultural Order, AR8949; California Coastkeeper Alliance, et al. Comments on Revised Draft Agricultural Order, AR11495; California Coastkeeper Alliance, et al. Comments on Revised Draft Agricultural Order, AR11497; California Coastkeeper Alliance, The Otter Project, and Santa Barbara Channelkeeper Comments on Revised Draft Agricultural Order, AR11503. Oral comments provided at Central Coast Water Board meetings include those identified in the meeting minutes cited in the footnotes below.

two additional days dedicated to the consideration of whether to adopt the order. The September 2018 board meeting consisted of a workshop where panels of agricultural, environmental, and environmental justice representatives gave presentations to the Regional Board in response to a series of questions staff proposed.[339] Several of the environmental petitioners provided panel presentations during this meeting.[340] During the November 2018 board meeting, Central Coast Water Board staff presented a set of conceptual options tables of components for the agricultural order.[341] Again, several environmental petitioners provided presentations to the Regional Board.[342] The Central Coast Water Board spent the first two days of the March 2019 board meeting receiving the staff presentation of a framework for the permit requirements. [343] Members of the public, including representatives of several environmental petitioners, provided oral comment.[344] The Central Coast Water Board lengthened the May 2019 board meeting to accommodate a continuation of the agricultural order-related item from the March 2019 meeting.[345] The Central Coast Water Board spent over a day and a half of its May 2019 meeting concluding the March 2019 meeting item. During the May 2019 meeting, seven individuals provided public comment on the agricultural order, including a representative from one environmental petitioner.[346]

From September 10, 2020 through January 8, 2021, the Central Coast Water Board devoted 10 days to receiving oral comments from the public and to discussing the Draft Agricultural Order.[347] As with all the earlier opportunities to engage with the Regional Board at public meetings, several of the environmental petitioners participated in the meeting as presenters.[348] Additionally, several individual members of the public

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[339] *See generally*, September 20-21, 2018 Board Meeting, Minutes, AR4443; *see also* General Order at pp. 4–5, paragraph 20, AR0007–AR0008.

[340] Minutes, September 20-21, 2018 Board Meeting, at 4–5, AR4446–AR4447 (reflecting representatives from The Otter Project/Monterey Coastkeeper, Santa Barbara Channelkeeper, California Coastkeeper Alliance, and San Jerardo Cooperative as panelists).

[341] Minutes, November 8-9, 2018 Board Meeting, at p. 2, AR4797; *see also* General Order, at p.5, paragraph 21, AR0008.

[342] Minutes, November 8-9, 2018 Board Meeting, at p. 2, AR4797 (reflecting Horacio Amezquita, San Jerardo Cooperative, and Steve Shimek, Otter Project, Monterey Coastkeeper as presenters).

[343] Minutes, March 20-22, 2019 Board Meeting, at p. 2, AR5829.

[344] *Id.*, at pp. 2–3, AR5829–AR5830 (reflecting Steve Shimek, The Otter Project/Monterey Coastkeeper, as providing presentation and Horacio Amezquita, San Jerardo Cooperative as providing comments).

[345] *Id.*, AR5829 ("The board rescheduled the May 2019 meeting to May 15-17.").

[346] Minutes, May 15-17, 2019 Board Meeting, at pp. 2–3, AR6132–AR6133.

[347] General Order, at pp.5–6, AR0008–AR0009. Specifically, three full days, September 9, 10, and 23, 2020, were devoted entirely to hearing oral comments, and the remaining days were devoted to staff presentations and discussion.

[348] Minutes, September 10, 11, 23, 24, 2020; October 22-23, 2020; December 9-10, 2020; and January 7-8, 2021 Board Meetings, at pp. 2, 4, AR9842, AR9844 (reflecting representatives from The Otter Project/Monterey Coastkeeper, Santa Barbara Channelkeeper, California Coastkeeper Alliance, and San Jerardo Cooperative as panelists).

provided comments addressing contamination in their drinking water wells and the need to uphold the human right to safe drinking water.[349] During these meetings leading up to and during the adoption hearing, the Central Coast Water Board considered the statements and presentations from the public.

When it became clear that more time for discussion was needed, the Central Coast Water Board continued the agenda item, adding days to the meeting schedule, including four additional days to discuss the Draft Agricultural Order on October 22-23, 2020 and January 7-8, 2021.[350] The Central Coast Water Board considered adoption of the General Order during a meeting on April 14 and 15, 2021. At the adoption hearing, representatives from several of the environmental petitioners as well as individual members of disadvantaged communities provided public comment lasting one and a half days.[351]

The Central Coast Water Board distributed agendas in Spanish, provided Spanish interpretation at most of the aforementioned public meetings where the agricultural order was a scheduled agenda item, and in all cases, the Regional Board's agenda informed the public that it could request an interpreter.[352] The Regional Board also was cognizant that some community members had limited availability to provide public comments, and the Regional Board sought to accommodate those individuals.[353]

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[349] Minutes, September 10, 11, 23, 24, 2020; October 22-23, 2020; December 9-10, 2020; and January 7-8, 2021 Board Meetings, at pp. 5–6, AR9845–AR9846 (reflecting comments by David Rodriquez, David Vera, Kelly May, Marla Anderson, Lucy Hernandez, Maria Gonzalez, Karen Serrano).

[350] Email from Chris Rose, CCWB, Subject: Notice of Meeting: Draft Ag Order 4.0 and Associated Draft Environmental Impact Report, September 29, 2020, AR9803–AR9804 ("Please note that the board has scheduled another two-day board meeting devoted entirely to Draft Ag Order 4.0 – October 22-23, 2020."); Minutes, September 10, 11, 23, 24, 2020; October 22-23, 2020; December 9-10, 2020; and January 7- 8, 2021 Board Meetings, at p. 12, AR9852 (minutes to December 20, 2020 meeting) ("The board then scheduled a [] meeting on January 7-8, 2021 to complete its discussion of and deliberation on Draft Ag Order 4.0"); *see also* November 8, 2018 Board Meeting, Audio Recording of Item 5 (part 1), AR4930, at :34 (Board Chair Wolff stating that item would be continued on following day if not completed by 6pm); Agenda, May 15-17, 2019 Board Meeting, AR6122 (stating "Agricultural Order 4.0 Requirements Discussion (continued from March 2019 Board Meeting)").

[351] Minutes, April 14-16, 2021 Board Meeting, at p. 4, AR11714.

[352] *E.g.*, Agenda, March 20-22, 2019 Board Meeting, at p. 4, AR5822 ("If you require an interpreter, please contact the Clerk of the Board . . . ."; Agenda, March 20-22, 2019 Board Meeting in Spanish, AR5823; Agenda, May 15-17, 2019 Board Meeting, at p. 1, AR6121 ("An interpreter will be available to translate into Spanish, and to translate statements made in Spanish into English."); Agenda, May 15-17, 2019 Board Meeting, in Spanish, AR6126; Agenda, January 30-31, 2020 Board Meeting, at p. 4, AR6165 (allowing requests for Spanish interpreter); Agenda,, September 10-11, 2020 Board Meeting at 2, AR9790 (providing notice that Spanish interpreter would be present); Agenda, September 10-11, 2020 Board Meeting, in Spanish, AR9783; Agenda, September 23-25, 2020 Board Meeting, at p. 2, AR9790 (providing notice that Spanish interpreter would be present); Agenda, September 23-25, 2020 Board Meeting in Spanish, AR9795.

[353] *E.g.,* November 8, 2018 Board Meeting, Audio Recording of Item 5 (part 1), at :55, AR4930 (Board Chair Wolff instructing the public to indicate on their speaker cards if they were unavailable to provide comments on the following day).

The Central Coast Water Board's public participation efforts satisfy the requirements in the Water Code and Government Code, and the General Order is consistent with the Regional Board's Human Right to Water resolution.

Contention CCA-4: The General Order violates the Reasonable and Beneficial Use doctrine. (CCA Petition, pp. 22-24)

Response CCA-4: The Central Coast Water Board disagrees with the environmental petitioners' contention. Specifically, the environmental petitioners argue that the "Regional Board has a mandatory duty to perform a reasonable use analysis explicitly and explain how the analysis was done to ensure the interest of the people and public welfare are protected."

As explained in the Response to Comments on the Revised Draft Agricultural Order, Article X, section 2 of the California Constitution and Water Code section 100 express the general mandate that water resources be used reasonably, but this is not a specific duty or legal requirement for the regional boards when issuing waste discharge requirements under the Porter-Cologne Act.[354] The cases the environmental petitioners cite to support their position all pertain to water rights and the application of the reasonable and beneficial use doctrine in that context.[355] In contrast, the General Order regulates the discharge of waste and does not allocate water to any entity. The consideration of whether a use of water or wastewater is wasteful or unreasonable is not part of the waste discharge permitting process under Water Code section 13263 and is outside the Regional Board's purview. Accordingly, the General Order does not violate the Reasonable and Beneficial Use doctrine.

Contention CCA-5: The Regional Board did not fulfill its public trust duties. (CCA Petition, pp. 24-25)

Response CCA-5: The environmental petitioners argue that the Central Coast Water Board failed to properly analyze the impact of agricultural discharges on public trust resources and violated its public trust duties when adopting the General Order. The Central Coast Water Board disagrees with this contention.

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[354] Responses to Comments, RAO, at p. 59, AR16585.

[355] CCA Petition, at p. 23–24, citing *National Audubon Society, et al. v. The Superior Court of Alpine County* (1983) 33 Cal.3d. 419 (concerning water diversions); *Environmental Defense Fund, Inc. v. East Bay Municipal Utility District* (1977) 20 Cal.3d 327, judg. vacated and remanded by (1978) 439 U.S. 811 and op. vacated by (1980) 26 Cal.3d 183 (concerning purchase of water rights and associated diversion); *Joslin v. Mann Municipal Water District* (1967) 67 Cal.2d 132 (concerning construction of dam restricting downstream flows); *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351 (concerning impoundment of creek water); *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463 (concerning State regulation regarding stream water diversion); *Imperial Irrigation District v. State Water Resources Control Board* (1986) 186 Cal.App.3d 1160 (concerning irrigation district's use of water under appropriative rights); *People ex. rel. State Water Resources Control Board v. Forni* (1976) 54 Cal.App.3d 743 (concerning water diversions).

In accordance with the seminal California Supreme Court case *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, "[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible."[356] Uses protected by the public trust have traditionally been navigation, commerce, and fisheries, including the right to fish, hunt, bathe, swim, to use for boating and general purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes.[357] Groundwater, including groundwater that provides drinking water, is not a public trust resource.[358]

The Central Coast Water Board has met its public trust duty. The Porter-Cologne Act is, in effect, a codification of the Water Boards' public trust duty vis-à-vis water quality because it requires the Water Boards to adopt water quality control plans establishing water quality objectives necessary to protect beneficial uses and further requires that waste discharge requirements issued by the Water Boards implement those water quality control plans, and take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose.[359] The Central Coast Water Board thus considered public trust uses when it adopted the Basin Plan,[360] when it incorporated the water quality objectives specified in the Basin Plan into the General Order,[361] and when it established General Order interim quantifiable milestones and management practice implementation, planning, recordkeeping, monitoring, and reporting requirements designed to ensure that agricultural discharges will not cause or contribute to exceedances of those objectives in accordance with appropriate time schedules.

For example, with regard to the health of fisheries, a public trust resource, the Basin Plan establishes several beneficial uses related to uses of water that support

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[356] *National Audubon,* 33 Cal.3d at pp. 446–447. In *National Audubon*, the duty to consider the public trust applied to the planning and allocation of water resources, not to a water quality order. (*See Monterey Coastkeeper v. Monterey County Water Resources Agency* (2017) 18 Cal.App.5th 1, 20–21 ["No issue was raised in *National Audubon a*s to the Porter-Cologne Act's express statutory scheme for the regional boards' regulation of waste discharges and the Porter-Cologne Act's corresponding administrative remedies."].)

[357] *National Audubon,* 33 Cal.3d at p. 434.

[358] In *Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal.App.5th 844, at p. 859, the court held that the navigable waterway, not the groundwater, was the public trust resource, but that extraction of groundwater that impacted a surface waterway may be considered an impact to a public trust resource.

[359] Water Code §§ 13241, 13263. In fact, Porter Cologne is in some respects broader in its protections than the public trust duty in that it applies to surface water and groundwater.

[360] *See State Water Board Cases* (2006) 136 Cal.App.4th 674, at pp. 777–779.

[361] The Central Coast Water Board also conducted an antidegradation analysis for water bodies with water quality better than the water quality objectives. (General Order, Attachment A, at pp. 54–74, paragraphs 163–238, AR0137–AR0157.)

ecosystems for fish, including Estuarine Habitat (EST), Warm Fresh Water Habitat (WARM), Cold Fresh Water Habitat (COLD), Marine Habitat (MAR), Migration of Aquatic Organisms (MIGR), and Spawning, Reproduction and/or Early Development (SPWN).[362] The Basin Plan sets water quality objectives protective of these beneficial uses and others. Where applicable, the water quality objectives have been incorporated into the General Order. For example, the Basin Plan includes narrative water quality objectives for pesticides and toxicity for all inland surface waters, enclosed bays, and estuaries that are applicable to all beneficial uses, including those uses that are protective of the health of fisheries.[363] Surface receiving water limits based on these narrative water quality objectives are established in the Order.[364] Similarly, the narrative water quality objective for turbidity is "Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." The findings explain that the Order established the turbidity limits specifically for cold and freshwater habitat, taking the health of fisheries into account.[365] The General Order requires that "Dischargers must not cause or contribute to exceedances of applicable water quality objectives, . . . must protect all beneficial uses for inland surface waters, enclosed bays, and estuaries, and for groundwater, and must prevent nuisance. . .,"[366] except where permitted in compliance with time schedules established in the General Order.

The Central Coast Water Board disagrees that consideration of the public trust requires a specific finding on public trust, as environmental petitioners imply.[367] The General Order findings extensively discuss surface water impacts, including from nutrients,[368] pesticides and toxicity,[369] and from sediments, turbidity, and impermeable surfaces.[370] The General Order also analyzes impacts on water quality and beneficial uses due to riparian area removal.[371] This analysis includes consideration of impacts on fish and other aquatic life habitat[372] and terrestrial and avian wildlife habitat.[373] The antidegradation analysis references beneficial uses protecting aquatic life, wildlife

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[362] Basin Plan, at pp. 8–10, AR34068–AR34070.

[363] Basin Plan, at p. 31, AR34091.

[364] General Order, Attachment A, at pp. 93–100, Table A.B-2, AR0176–AR0183.

[365] *Id.*, at pp. 200-201, paragraphs 144–148, AR0283–AR0284.

[366] General Order, at p. 42, paragraph 1, AR0045.

[367] *See Citizens for East Shore Parks v. State Lands Comm.* (2011) 202 Cal.App.4th 549, 578. Environmental petitioners commented on the Regional Board's public trust duties during the proceedings. The Regional Board responded at Response to Comments, RAO, at pp. 58–59, AR16584–AR16585 (Master Response 10.5).

[368] General Order, Attachment A, at pp. 173–177, paragraphs 21–41, AR0256–AR0260.

[369] *Id.*, at pp. 178–189, paragraphs 49–107, AR0261–AR0272.

[370] *Id.*, at pp. 194–200, paragraphs 113–143, AR0277–AR0283.

[371] *Id.*, at pp. 201–217, paragraphs 150–212, AR0284–AR0300.

[372] *Id.*, at pp. 215–216, paragraphs 203–206, AR0298–AR0299.

[373] *Id.*, at pp. 216–217, paragraphs 207–212, AR0299–AR0300.

habitat, and rare, threatened, and endangered species habitat, and considers the impacts of agricultural uses on these beneficial uses.[374] Additionally, the Central Coast Water Board extensively analyzed and considered the environmental impacts to public trust resources in its CEQA analysis, including impacts on biological resources[375] and hydrology and water quality.[376] Ultimately, the General Order imposes targets, limits, planning, monitoring, reporting, and other requirements, with a time schedule, designed to ensure that discharges permitted under the General Order will not cause or contribute to exceedances of water quality objectives designed to protect all beneficial uses supported by the region's water bodies.

Environmental petitioners take issue specifically with the riparian management and setback requirements of the General Order, arguing that in the absence of more stringent measures, akin to those proposed in the Draft General Order, the Central Coast Water Board fails its public trust duty. The duty to consider the public trust is not absolute, and the Central Coast Water Board does not consider the public trust in a vacuum. The Board is empowered to determine whether protection is feasible when balanced against other public interests, such as municipal, industrial, and agricultural uses of water.[377] As explained in response to Contention CCA-1, subsection A.3, the Central Coast Water Board made a reasonable policy determination when it reduced the riparian area management requirements to the prohibition of disturbance of existing riparian areas due to "comments received concerning the complexity, legality, and economic burden of the requirements."[378]

Contention CCA-6: The extended TMDL compliance dates are inconsistent with State Water Board policy and fair notice requirements. (CCA Petition, pp. 25-26)

Response CCA-6: The Central Coast Water Board disagrees with this contention. The General Order's surface receiving water limits implement two types of TMDLs: "those that are being renewed through a single regulatory action concurrent with the adoption of the Order, and those that were established as Basin Plan amendments."[379] Although in some cases the surface receiving water limit compliance deadlines in Tables C.3-2, C.3-4, and C.3-6 of the General Order differ from the TMDL target dates stated in the Basin Plan or the previous TMDLs that are now being renewed with the adoption of the General Order, the establishment of the surface receiving water limits comply with applicable laws, plans, and policies. Additionally, the Central Coast Water Board properly renewed eight TMDLs as a single regulatory action.

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[374] *Id.*, at pp. 72–73, paragraph 230, AR0155–AR0156.

[375] FEIR, vol. 1, at pp. 3.3-1–3.3-34, AR0645–AR0678.

[376] *Id.*, at pp. 3.9-1–3.9-54, AR0787–AR0840.

[377] *State Water Board Cases*,136 Cal. App.4th at p. 778; *National Audubon*, 33 Cal.3d at pp. 446–447.

[378] Responses to Comments, RAO, at p. 57, AR16583 (Master Response 10.3).

[379] *Id.*, at p. 46, AR16572 (Master Response 5.6).

As stated in the Master Responses to Comments on the Revised Draft Agricultural Order, the General Order "does not revise the Basin Plan or the TMDLs established through a Basin Plan amendment."[380] For the surface receiving water limits based on these TMDLs, the Central Coast Water Board "interpret[ed] the appropriate permit limit compliance date as no earlier than December 31, 2032. Based on evidence indicating that current practices and technology are unlikely to result in pollutant load reductions at this time, the CCWB determined it is appropriate to allow an approximate 11 years from the date this Order is adopted to achieve the permit limits."[381] The Central Coast Water Board further explained:

> These TMDLs assign load allocations to agricultural discharges and set target dates for achievement of the load allocations. These dates are variously described as "target date," "target," and "estimated timeframe," offering flexibility in their interpretation when implementing them into waste discharge requirements. Other TMDLs use phrasing such as "the load allocation . . . should be achieved" within a period of time after the effective date of the TMDL.
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> In issuing waste discharge requirements, the CCWB "shall implement any relevant [basin plans] that have been adopted," (Wat. Code, § 13263, subd. (a)), including any applicable TMDLs. The NPS Policy does not provide specific direction on how any applicable load allocations and target dates for attainment for those load allocations should be incorporated into a nonpoint source permit. The NPS Policy states: "In considering approval of specific interim goals and the time necessary to achieve those goals, a [regional board] *may consider such factors* as the necessity of providing for significant capital outlays for [management practice] implementation, the presence of a severely degraded waterbody, and whether or not an NPS control implementation program is a component of a larger TMDL implementation program." (NPS Policy, p. 13 (emphasis added)).
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> Here, if the CCWB strictly followed the implementation schedule in the Basin Plan, hundreds of dischargers would be out of compliance with the Order provisions immediately or within the early stages of the implementation of the permit. The CCWB considered the option of issuing time schedule orders to such dischargers under Water Code section 13300

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[380] *Id.*, at p. 46, AR16572 (Master Response 5.6).

[381] *Id.*, at p. 47, AR16573 (Master Response 5.6).

> in lieu of extending the compliance schedules within the permit under Water Code section 13263, subdivision (c), but concluded that time schedule orders would require an extensive investment of board resources with questionable water quality results. Applying a less-than-strict interpretation of target dates to achieve TMDL load allocations when establishing the surface receiving water limits in this Order is both a legally permissible and practical alternative to the exercise of issuing multiple time schedule orders.
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> In sum, the CCWB carefully reviewed all TMDLs established in the Basin Plan and found that allowing additional time for final compliance with the TMDL load allocations when establishing surface receiving water limits is not inconsistent with the requirement to implement the applicable Basin Plan provisions in this permit.[382]

The environmental petitioners do not address how the Central Coast Water Board's explanation in the Master Responses to Comment on the Revised Draft Agricultural Order or the General Order findings in support of the compliance dates for surface receiving water limits based on Basin Plan-established TMDLs is deficient or noncompliance with the applicable laws, plans, and policies.

As to the eight TMDLs the Central Coast Water Board renewed as part of the adoption of the General Order, the reestablished TMDLs indeed have different dates by which to achieve the TMDL load allocations when compared to their counterparts that had been previously established as single regulatory actions from 2004 through 2014; however, the timelines to achieve the load allocations for those eight TMDLs is not inconsistent with State Water Board policy.

TMDLs may be established, or in this case reestablished, concurrently with a permitting action when the "solution to a[] [water body] impairment can be implemented with a single vote of the regional board."[383] When establishing TMDLs as single regulatory actions, the State Water Board's Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options does not require additional public participation than what is required in the underlying regulatory action. Due to the nature of "single regulatory action" TMDLs, what the environmental petitioners refer to as "TMDL stakeholders" are the same entities as potential enrollees in the General Order. As such, compliance with the public participation requirements for the permitting action constitutes satisfaction of the public participation requirements, including notice, for the establishment of a TMDL. The proposal to reestablish the eight TMDLs was included in

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[382] *Id.*, at p. 47, AR16573 (Master Response 5.6).

[383] Water Quality Control Policy for Addressing Impaired Waters (Impaired Waters Policy), at p. 5, AR32907.

the Draft Agricultural Order released to the public in February 2020 and carried through in the Revised Draft Agricultural Order and Proposed Agricultural Order before being adopted in the General Order.[384] The Findings in the Draft Agricultural Order, Revised Draft Agricultural Order, and Proposed Agricultural Order identify the TMDLs being reestablished as well as the Central Coast Water Board-adopted resolutions initially establishing the TMDLs.[385] The Central Coast Water Board provided notices of opportunities to comment on both the Draft Agricultural Order and the Revised Draft Agricultural Order and received comments related to the TMDLs.[386] Accordingly, the environmental petitioners' contention that the Central Coast Water Board did not provide notice that it was reestablishing eight TMDLs as a single regulatory action through the adoption of the General Order lacks merit.

The Draft Agricultural Order proposed that the eight TMDLs to be reestablished through a single regulatory action with the permit adoption would maintain the same target dates or timeframes to achieve the load allocations as the original TMDLs, and then Draft Agricultural Order used the TMDL target dates or time frames to establish compliance deadlines for fifteen surface receiving water limits.[387] The Draft Agricultural Order implemented the TMDLs established through basin plan amendments by establishing

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[384] Draft Agricultural Order, Attachment A, at pp. 29–30, paragraphs 34–35, AR6978–AR6980; Revised Draft Agricultural Order, Attachment A, at p. 23, paragraphs 61–62, AR10541; Proposed Agricultural Order, Attachment A, at p. 38, paragraphs 119–120, AR11932; General Order, Attachment A, at p. 37, paragraphs 119–120, AR0120.

[385] Draft Agricultural Order, Attachment A, at pp. 28–29, paragraph 33, AR6978–AR6979; Revised Draft Agricultural Order, Attachment A, at pp. 22–23, paragraph 60, AR10540–AR10541; Proposed Agricultural Order, Attachment A, at pp. 37–38, paragraph 118, AR11931–AR11932.

[386] Notice of Availability and Opportunity to Comment, AR6227; Revised Notice of Availability and Opportunity to Comment, AR6266; Presentation from Ag Partners (Abby Taylor-Silva, Norm Groot, Claire Wineman, Tess Dunham), *An Alternative to the Draft Ag Order 4*.0, AR10036 (proposing compliance dates for TMDLs); Presentation from Steve Shimek, The Otter Project/Monterey Coastkeeper, *The Public Interest 4.0* Option, AR10101 ("All TMDLs must be brought into the same timelines."); Notice of Availability and Opportunity to Comment Revised Draft Agricultural Order, AR10280; FEIR, vol. 3, at pp. 2-32–2-33, AR1561–AR1562 (Master Response 2.5.6); Master Responses to Comments, RAO, at pp. 46–47, AR16572–AR16573 (Master Response 5.6).

[387] These limits are: Nitrate based on the Arroyo Paredon Nitrate TMDL; Nitrate based on the Bell Creek Nitrate TMDL; Nitate based on the Glen Annie Canyon Nitrate TMDL; Nitrate, based on the Los Berros Creek Nitrate TMDL; Nitrate, based on the Los Osos Creek, Warden Creek, and Warden Lake Wetland Nutrient TMDL; Additive toxicity, based on the Arroyo Paredon Diazinon TMDL; Diazinon, based on the Arroyo Paredon Dazinon TMDL; Chlorpyrifos, based on the Lower Salinas River Watershed Chlorpyrifos and Diazinon TMDL; Diazinon, based on the Lower Salinas River Watershed Chlorpyrifos and Diazinon TMDL; Additive toxicity, based on the Lower Salinas River Watershed Chlorpyrifos and Diazinon TMDL; Additive toxicity, based on the Pajaro River Watershed Chlorpyrifos and Diazinon TMDL; Chlorpyrifos, based on the Pajaro River Watershed Chlorpyrifos and Diazinon TMDL; Diazinon, based on the Pajaro River Watershed Chlorpyrifos and Diazinon TMDL; Aquatic toxicity in sediment, based on the Pajaro River Watershed Chlorpyrifos and Diazinon TMDL; and Aquatic toxicity in the water column, based on the Pajaro River Watershed Chlorpyrifos and Diazinon TMDL. *See* TMDLs Adopted through Earlier Permitting Action, AR34894–AR35256; Draft Agricultural Order, Attachment A, at p. 30, paragraph 35, AR6980 ("The Central Coast Water Board finds that it is appropriate to continue the implementation of the TMDLs without altering their adopted time schedules").

compliance deadlines for each surface receiving water limit based on the applicable TMDL target date or timeframe to achieve the applicable load allocation.[388] For all surface receiving water limits based on TMDLs that also had compliance deadlines that had already passed, the Draft Agricultural Order Findings described the process by which a Discharger could request a time schedule order.[389] For the surface receiving water limits not based on TMDL load allocations, the Draft Agricultural Order established a December 31, 2031 compliance deadline.[390]

Written comments on the Draft Agricultural Order from some of the environmental petitioners, stated that "[t]ime schedules for areas covered by TMDLs must be folded into the time schedule for non-TMDL areas" and "[b]ecause all the listed TMDLs are implemented by the Agricultural Order, *there is no reason why the compliance dates for the non-TMDL areas cannot become the TMDL compliance date as well*."[391] In response to these comments, the Revised Draft Agricultural Order included revised compliance deadlines for surface receiving water limits that were all December 31, 2032, at the earliest, in conformance with an update to the compliance deadline previously proposed for only surface receiving water limits in non-TMDL areas.[392] The Revised Draft Agricultural Order implemented the change that Monterey Coastkeeper,

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[388] Draft Agricultural Order, Attachment A, at p. 139, paragraph 40, AR7089 (nutrient limits); *id.*, at p. 152, paragraph 62, AR7102 (pesticide and toxicity limits); *id.*, at p. at 164, paragraph 33, AR7114 (sediment limits). These limits are: Nitrate, Total Nitrogen (wet season and dry season), Total Phosphorus (wet season and dry season) based on the TMDL for Nitrogen and Phosphorus Compounds in Streams of the Franklin Creek Watershed; Ammonia (un-ionized), Nitrate, Total Nitrogen (wet season and dry season); Orthophosphate (wet season and dry season), Nitrate (wet season and dry season), based on the TMDL for Nitrogen Compounds and Orthophosphate in the Lower Salinas River Watersheds; Ammonia (Un-ionized), Nitrate, Total Nitrogen (wet season and dry season), Nitrate (wet season and dry season), orthophosphate (wet season and dry season), based on the TMDL for Nitrogen Compounds and Orthophosphate in Streams for the Pajaro River Basin; Nitrate, based on the TMDL for Nitrate-Nitrogen in San Luis Obispo Creek; Ammonia (un-ionized), Nitrate, Nitrate (wet season or year-round, and dry season), orthophosphate (wet season or year-round, and dry season); Additive toxicity (Pyrethroids) in sediment and aquatic toxicity in sediment, based on the TMDL for Sediment Toxicity and Pyrethroid Pesticides in Sediment in the Lower Salinas River Watershed; Additive toxicity (chlorpyrifos in the water column, diazinon in the water column, malathion in the water column, additive toxicity (pyrethroids) in sediment, aquatic toxicity in sediment, aquatic toxicity in the water column, 4,4'-DDT, 4,4'-DDE, 4,4'-DDD, total DDT, chlordane, dieldrin, endrin, and toxaphene, based on the TMDL for Toxicity and Pesticides in the Santa Maria Watershed; Sediment, based on the TMDL for Sediment in Morro Bay; and Sediment, based on the TMDL for Sediment in the Pajaro River. *See* Basin Plan, at pp. 96–253, AR34156–AR34313.

[389] Draft Agricultural Order, Attachment A, at p. 30, paragraph 35, AR6980.

[390] Draft Agricultural Order, at p. 66, Table C.2-2, AR6938 (nutrient limits, non-TMDL); *id.*, at pp. 73–74, Table C.3-2, AR6945–AR6946 (pesticide and toxicity limits, non-TMDL); *id.*, at p. 76, Table C.4-2, AR6948 (turbidity limits, non-TMDL).

[391] FEIR, vol. 3, at pp. 3-726–3-728, AR2311–AR2313 (Comments BY-88 & BY-94) (emphasis added).

[392] *Id.*, vol. 3, at p. 2-33, AR1562 (Master Response 2.5.6); Revised Draft Agricultural Order, at pp. 56–59, Table C.3-2, AR10343–AR10346 (nutrient limits, TMDL areas); Revised Draft Agricultural Order, at pp. 62–67, Table C.3-4, AR10349–AR10354 (pesticide and toxicity limits, TMDL areas); Revised Draft Agricultural Order, at p. 71, Table C.3-6, AR10357 (turbidity limits, TMDL areas).

California Coastkeeper Alliance, and Santa Barbara Channelkeeper requested and now inexplicably contend is contrary to law. These changes were carried through to the Proposed Agricultural Order and adopted General Order.

Under the General Order, the eight TMDLs reestablished through a single regulatory action have different timeframes to achieve the load allocations than their original TMDLs. The General Order Findings explain the rationale for the reestablished TMDL timeframes, and consequently, the respective surface receiving water limits:

> For the TMDLs the Central Coast Water Board is now reestablishing through this permitting action, the Central Coast Water Board finds that it is appropriate to allow at least an approximate 11 years from the date this Order is adopted to achieve the TMDL, to allow sufficient time to address and meet the load allocations through this Order. This time is needed to allow Dischargers to implement and adapt their management practices through increasingly more effective and innovative methods to achieve the TMDL load allocations, expressed as limits in this Order. Accordingly, for TMDLs with previously-established dates to achieve the TMDL that are earlier than December 31, 2032 (including TMDLs with dates that have already passed), this Order establishes December 31, 2032, as the date to achieve the TMDL, which will also serve as the permit compliance date in this Order. TMDLs with previously established attainment dates after December 31, 2032, will retain those dates as permit compliance dates in this Order.[393]

By reestablishing the eight TMDLs through this General Order, the Central Coast Water Board ensured that the TMDLs would not be terminated upon expiration of the 2017 Agricultural Order. Had the TMDLs terminated due to expiration of the prior permit rather than due to actual water quality improvements, the water quality impairments would remain without a plan for improvement, and any surface receiving water limits in the General Order would be based on applicable water quality objectives, which in most cases are less stringent than the TMDL load allocations. The Impaired Waters Policy is silent on the process for reestablishing TMDLs adopted as single regulatory actions where the underlying regulatory actions are expiring. In particular, the Impaired Waters Policy does not require reestablished single regulatory action TMDLs to carry over existing implementation plans, and in fact, such a requirement is illogical if the implementation plan is the new permit.

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[393] General Order, Attachment A, at pp. 37–38, paragraph 120, AR0120–AR0121. The Findings also explain the implementation of TMDLs established through Basin Plan amendments and establishing permit compliance dates for surface receiving water limits based on those TMDLs. *Id.*, at p. 38, AR0121.

In reestablishing the eight TMDLs through the General Order, the Central Coast Water Board reviewed the impairments and considered the proposed implementation plan for the TMDLs.[394] The primary difference in the implementation plans for the TMDLs reestablished by the General Order and the single regulatory action TMDLs' implementation plans of prior agricultural orders is that the General Order establishes numeric surface receiving water limits. Allowing Dischargers 11 years "to implement and adapt their management practices through increasingly more effective and innovative methods" to meet the new permit requirements is reasonable. The Central Coast Water Board properly concluded the eight TMDLs and the implementation plan, including the time schedule, could be reestablished and adopted through the General Order.

For all the reasons described in this response to Contention CCA-6, the compliance deadlines for the surface receiving water limits in Tables C.3-2, C.3-4, and C.3-6 of the General Order are appropriate.

VI. RESPONSES TO CONTENTIONS REGARDING COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The agricultural petitioners and the environmental petitioners both raise contentions that the Central Coast Water Board did not comply with CEQA when adopting the General Order.

The Regional Board has complied with all of CEQA's requirements in evaluating the project in this case, the General Order, and preparing the Final EIR (FEIR). The comprehensive administrative record contains substantial evidence that supports the Regional Board's decision and the FEIR. The administrative record clearly shows the care and attention to detail that went into the multi-year development of the General Order and its accompanying CEQA documentation. Throughout this record, it is apparent that the Regional Board honored the core tenets of CEQA: protecting the environment and keeping the public and decision-makers informed.

The agricultural petitioners essentially claim that the Regional Board erred in its CEQA process because it did not reach the agricultural petitioners' desired conclusions, particularly that there are increased regulatory costs that result in significant physical impacts on the environment. Many of the agricultural petitioners' arguments are based in misconstruction of facts and misapplication of law, and, in large part, copied directly from outdated comments on the Draft EIR (DEIR) to which the Regional Board has already publicly responded.

The agricultural petitioners' primary concern and contention is that two sections of the FEIR — Section 3.1 *Agriculture and Forestry Resources* and Section 3.5 *Economics* — do not adequately assess the adverse impact the General Order will have on the environment. These sections of the FEIR are at AR0601 through AR0628 and AR0697

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[394] *Id.*, at p. 37, paragraph 119, AR0120.

through AR0739, respectively. The FEIR is in underline/strike-through format showing revisions to the DEIR based on key changes made to the General Order between the DEIR and the FEIR.[395] These changes, which include the incorporation of a the third-party alternative compliance pathway for groundwater protection and elimination of riparian and operation setback requirements, reduced impacts to agricultural resources and reduced potential costs of compliance that commenters, including the agricultural petitioners, asserted would lead to agricultural land conversion. The responses to Contentions GS-11 through GS-15 respond to the agricultural petitioners' contentions in the order they are raised in the GS Petition.

The environmental petitioners' contention that the Central Coast Water Board did not comply with CEQA is distilled into the argument that the EIR should have been recirculated prior to certification. The Central Coast Water Board addresses this assertion in response to Contention CCA-7.

A. CEQA and the Draft Environmental Impact Report

The overriding and primary goal of the California Environmental Quality Act (CEQA) is the protection of the environment.[396] This goal has two broad purposes: avoiding or reducing environmental damage when possible and providing information to decision-makers and the public concerning the environmental effects of proposed and approved activities.[397] Discretionary activities undertaken by public agencies that have the potential to result in a physical change to the environment are "projects" subject to the requirements of CEQA.[398] When an agency believes that a proposed action may be a project for purposes of CEQA, the agency may first perform an Initial Study to evaluate whether substantial evidence exists that the proposed project may result in significant adverse environmental impacts, or an agency may go ahead and prepare an environmental impact report (EIR) when it determines an EIR will clearly be required.[399]

When a project is predicted to result in significant environmental impacts that cannot be fully avoided or mitigated, the lead agency must prepare an EIR.[400] An EIR is an informational document that a public agency must consider before it approves or disapproves a project. Its purposes are to provide public agencies and the public with detailed information about the impacts that a proposed project is likely to have on the environment, to list ways in which significant impacts of a project might be minimized,

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[395] *See generally* FEIR, vol. 3, at pp. 5-1–5.2, AR4278–AR4279 (describing changes to the Draft Agricultural Order).

[396] Pub. Resources Code (PRC), §§ 21000-21002.

[397] Cal. Code Regs., tit. 14 (CEQA Guidelines), § 15002.

[398] PRC, § 21080.

[399] CEQA Guidelines, § 15063.

[400] *Id.* §§ 15064, 15081.

and to identify alternatives to the project.[401] An EIR is the primary means of achieving the policy goal that agencies "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state."[402] In this case, the Central Coast Water Board's General Order was determined, from the outset of its development, to be a "project," which could require preparation of an EIR, and the Central Coast Water Board the "lead agency" for the preparation of the EIR.

Among the most crucial steps of developing an EIR are the lead agency's discussions of the proposed project's foreseeable impacts on the environment, the establishment of criteria used to evaluate the significance of those impacts, and the application of those criteria, in light of substantial evidence, to determine whether those foreseeable impacts will be "significant" or "less-than-significant." By evaluating the significance of foreseeable impacts in an EIR, a lead agency and the public can better determine whether impacts deemed significant can be avoided, through mitigation measures or alternative project plans, or, if not, weigh the burdens of significant impacts against the benefits of completing the project despite those impacts.

The first step requires development of criteria for evaluating whether potentially significant impacts are, in fact, significant. Under CEQA, the lead agency is responsible for determining whether an adverse environmental effect identified in an EIR should be classified as "significant" or "less than significant."[403] The lead agency has discretion to formulate standards of significance for use in an EIR, which requires the agency to make a policy judgment distinguishing adverse impacts.[404] In doing so, a lead agency's choice of thresholds must be "based to the extent possible on scientific and factual data" and must reflect "an exercise of reasoned judgment" founded on substantial evidence.[405] The standards of significance used in an EIR can be based on a number of sources, including determinations by the lead agency exercising its own judgment, in reliance on the judgment of the experts who prepare the EIR, or following the standards in the initial study checklist in CEQA Guidelines Appendix G.[406]

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[401] PRC, §§ 21002, 21002.1(a), 21061; CEQA Guidelines, § 15362.

[402] PRC, § 21001(a).

[403] CEQA Guidelines, § 15065(b).

[404] *San Francisco Baykeeper, Inc. v. State Lands Comm'n* (2015) 242 Cal.4th 202, 227 (*Baykeeper v. State Lands Comm'n*); *North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.4th 614, 625 (*North Coast Rivers Alliance*).

[405] CEQA Guidelines, § 15064(b); *Cleveland Nat. Forest Found. v. San Diego Assn. of Gov'ts* (2017) 3 Cal.5th 497, 515; *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.5th 160, 206 (*Mission Bay*).

[406] *Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.4th 200, 243 (lead agency has discretion to determine significance)*; Mount Shasta Bioregional Ecology Ctr. v. County of Siskiyou* (2012) 210 Cal.4th 184, 204 (significance standards based on expert report); *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.4th 342, 362 (*Napa Citizens*) (significance standard developed by drafters of EIR); *Mission Bay*, 6 Cal.5th at p. 192.

The second step in discussing and evaluating a project's environmental impacts is to identify potentially significant and unavoidable direct, indirect, and long-term physical impacts on the environment that will foreseeably result from the project. [407] A direct significant effect on the environment refers to a substantial or potentially substantial adverse change in the environment.[408] This evaluation requires evidence-based forecasting of how the project will result in substantial and adverse physical change(s) to the environment when compared to existing, pre-project conditions.[409] Indirect effects are changes to the physical environment that occur later in time or farther removed in distance than direct effects.[410] An indirect impact should be considered only if it is a reasonably foreseeable impact caused by the project.[411] An environmental impact that is speculative or unlikely to occur is not reasonably foreseeable.[412] If the lead agency conducts a thorough investigation and finds that an indirect impact is too speculative for evaluation, it may terminate discussion of the impact after noting its conclusion.[413] Whether an indirect effect is reasonably foreseeable is a question of fact for the agency to resolve.[414] Indirect impacts that are foreseeable may be evaluated at a more general level of detail than direct impacts.[415]

The third step is analysis and discussion of whether potentially significant impacts identified in step two are significant, based on an application of the significance criteria developed in step one, to the evidence before the agency. In determining whether an impact is significant, "the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons."[416] An EIR must also briefly set forth reasons that possible significant environmental impacts were found to be insignificant and thus not discussed in detail in the EIR.[417]

An EIR must also identify and describe any feasible mitigation measures that can be implemented to reduce or avoid potentially significant effects of the project.[418] The CEQA Guidelines provide a broad definition of mitigation, including but not limited to avoidance of impacts, minimization of impacts, rectification of impacts, reduction or

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[407] CEQA Guidelines, § 15162.2(a); PRC, § 21100(b)(1).

[408] PRC, §§ 21068, 21100(d).

[409] CEQA Guidelines, § 15162.2(a).

[410] *Id.* § 15358(a)(2).

[411] *Id.* §§ 15064(d)(3), 15358(a)(2).

[412] *Id.*

[413] *Id.* § 15145.

[414] *Placerville Historic Preservation League v. Judicial Council* (2017) 16 Cal.5th 187, 197; *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.5th 465, 482.

[415] *See Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 174.

[416] *Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.4th 357, 376.

[417] CEQA Guidelines, § 15128.

[418] *Id.* § 15162.4(a)(1); PRC, § 21100(b)(3).

elimination of impacts over time, or compensation for impacts.[419] Mitigation measures may also include requirements that a project comply with specific pre-existing laws or regulations (*e.g.*, avoiding significant impacts to water quality by requiring compliance with existing water quality standards).[420] CEQA does not require that an EIR contain analysis of every imaginable mitigation measure, but rather, those measures that are feasible, practical, and effective.[421] In reviewing the effectiveness of mitigation measures, courts generally defer to agency's conclusions, provided those conclusions are based on substantial evidence.[422]

B. Public Review and Comment

After a Draft EIR (DEIR) has been developed, the lead agency must provide notice of the DEIR's availability for public review and comment.[423] Any interested person may comment on a DEIR.[424] The purposes of the comment period include the opportunities for disclosing agency analyses, checking for accuracy, detecting omissions, discovering public concerns, and soliciting counter proposals.[425] Consistent with these purposes, the CEQA Guidelines provide that comments on a DEIR should focus on the sufficiency of the EIR's identification of potential environmental impacts and mitigation measures and should, whenever possible, be supported by data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts.[426]

The lead agency must evaluate comments on the DEIR that were received during the review period and must include written responses to comments in the Final EIR (FEIR).[427] As discussed in greater detail in response to Contention GS-11, the comment process is intended to bring out information that will produce a better EIR, not to set up "a series of hoops for the lead agency to jump through."[428]

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[419] CEQA Guidelines, § 15370.

[420] *See, e.g., Sundstrom v. County of Mendocino* (1988) 202 Cal.3d 296, 308 (*Sundstrom*).

[421] *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.4th 911, 935; *Napa Citizens*, 91 Cal.4th at p. 365.

[422] *See Sacramento Old City Assn. v. City Council* (1991) 229 Cal.3d 1011, 1027.

[423] PRC, § 21092; CEQA Guidelines, § 15087.

[424] PRC, § 21082.1(b); CEQA Guidelines, §§ 15087, 15201.

[425] CEQA Guidelines, § 15200.

[426] *Id.* § 15204.

[427] *Id.* § 15088(a).

[428] *City of Irvine v. County of Orange* (2015) 238 Cal.4th 526, 549.

C. The Final EIR

After a DEIR has been circulated for review and comment by the public and other agencies, the comments and the lead agency's responses to them are incorporated into the FEIR.

Courts apply an abuse of discretion standard when determining whether a lead agency complied with CEQA in preparing an EIR. Under that standard, a lead agency abuses its discretion if it failed to follow CEQA's procedures or if its determinations on questions of fact are not supported by substantial evidence.[429] Judicial review of an agency's decision under CEQA should not focus upon an EIR's environmental conclusions, but rather upon the EIR's sufficiency as an informative document.[430] "A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable.[431] A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated."[432] Thus, when reviewing the legal adequacy of an EIR, courts look for compliance with CEQA's informational goals: that significant environmental impacts be identified and evaluated, that feasible mitigation measures and alternatives be described, and that responses be provided to comments that raise significant environmental issues.[433]

In general, an EIR is presumed to be legally adequate, and a party challenging an EIR bears the burden of establishing otherwise.[434] A reviewing court will resolve any disputes regarding the adequacy of the EIR's analysis in favor of the lead agency if there is any substantial evidence in the record supporting the EIR's approach.[435] Substantial evidence is defined as "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."[436] Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts, but does not include argument, speculation, or

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[429] *Laurel Heights I*, 47 Cal.3d. at pp. 392; 1 Kostka & Zischke, *Practice Under CEQA*, supra, § 11:37.

[430] *Laurel Heights I*, 47 Cal.3d at pp. 392–393, citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189.

[431] *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 401–402.

[432] *Id.*, at p. 393.

[433] *See Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570 (*Western States Petroleum Assn.*); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta Valley*).

[434] *North Coast Rivers Alliance*, 216 Cal.4th at p. 638.

[435] *See*, *e.g.*, *Laurel Heights I*, 47 Cal.3d. at p. 409; 1 Kostka & Zischke, *Practice Under CEQA*, supra, § 11:35.

[436] CEQA Guidelines, § 15384(a); *Laurel Heights I*, 47 Cal.3d. at pp. 393, 409.

unsubstantiated opinion.[437] In applying the substantial evidence standard, "the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision."[438]

When looked at as a whole, an EIR should provide a reasonable, good faith disclosure and analysis of environmental impacts.[439] Because an EIR is required to evaluate environmental impacts only to the extent that it is reasonably feasible to do so, an EIR's evaluation need not be exhaustive.[440] An EIR that is deficient in one respect may nevertheless be adequate when viewed in its entirety.[441] The level of specificity required in an EIR is determined on the basis of the nature of the project and the rule of reason.[442] EIRs cannot and need not be perfect.[443] CEQA does not demand what is not realistically possible, given limitations on time, energy, and funds.[444] A lead agency has discretion in designing an EIR and need not conduct every recommended test or perform all requested research.[445] Rather, the scope of an EIR's analysis of potential future environmental consequences is guided by standards of reasonableness and practicality under which lead agencies need not undertake a premature evaluation of the consequences of undefined possible future actions.[446] An EIR may summarize the facts and analysis to keep the document manageable and readable.[447]

An agency need only use its best efforts to uncover and disclose what it reasonably can when addressing controversial issues that resist reliable forecasting.[448] An EIR need not attempt to predict future environmental consequences when future development is unspecified and uncertain.[449] When the agency finds that an assessment of a project's indirect effects would be speculative because it would require an analysis of

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[437] PRC, §§ 21080(e), 21082.2(c).

[438] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.

[439] *See generally Laurel Heights I*, 47 Cal.3d 376.

[440] CEQA Guidelines, § 15151.

[441] *Al Larson Boat Shop, Inc. v. Board of Harbor Comm'rs* (1993) 18 Cal.4th 729.

[442] *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.4th 647, 679.

[443] *Id.*; *Residents Ad Hoc Stadium Comm. v. Board of Trustees* (1979) 89 Cal.3d 274, 285 (*Stadium Comm. v. Bd. of Trustees*) ("[I]t is doubtful that any agency, however objective, however sincere, however well-staffed, and however well-financed, could come up with a perfect [EIR] in connection with any major project").

[444] *Stadium Comm. v. Bd. of Trustees*, 89 Cal.3d at p. 286.

[445] CEQA Guidelines, § 15204(a).

[446] *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.4th 1018.

[447] *City of Fremont v. San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.4th 1780, 1787; CEQA Guidelines, § 15151.

[448] *Planning & Conserv. League v. Castaic Lake Water Agency* (2009) 180 Cal.4th 210, 252 (*Castaic Lake*).

[449] *EPIC*, 44 Cal.4th at p. 502.

hypothetical conditions, it is not obligated to evaluate the effect in the EIR.[450] The question of whether alleged changes to the environment are reasonably foreseeable or are instead speculative is a question of fact that is determined on the basis of the evidence in the record of the agency's proceedings.[451] The basis for finding that an impact is too speculative to evaluate should be explained. Speculative impacts need not be evaluated, but the agency should conduct a thorough investigation before concluding that an impact is too speculative for further analysis.[452] When uncertain future events could lead to a range of possible outcomes, an EIR may base its analysis on a reasonable worst-case scenario.[453]

When no accepted methodology exists to assess an environmental impact, the lead agency may properly conclude that the impact is too speculative to reliably evaluate and is therefore unknown.[454] However, when there is evidence that a standard, accepted methodology can feasibly be used to assess a significant impact, the lead agency must assess the impact unless it provides a clear and adequately supported justification for its not doing so.[455] Even when a single uniformly accepted methodology that would allow precise measurement of an impact does not exist, the agency must "do the necessary work to educate itself about the different methodologies that are available."[456] An agency may determine that an impact is too speculative for evaluation, but only after thoroughly investigating the question of whether it is feasible to provide a reasonable analysis of the impact.[457]

When considering the adequacy of an EIR, the lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the information in the EIR and to decide whether to accept it. The agency may adopt the environmental conclusions reached by the experts that prepared the EIR even though others may disagree with the underlying data, analysis, or conclusions.[458] Discrepancies in results arising from different methods for assessing environmental issues do not undermine the validity of

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[450] *Rodeo Citizens Ass'n v. County of Contra Costa* (2018) 22 Cal.5th 214, 226.

[451] *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.4th 273, overruled on other grounds in *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279.

[452] *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.4th 1173, 1178; CEQA Guidelines, § 15145.

[453] *Castaic Lake,* 180 Cal.4th at p. 244.

[454] *See Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1137 (upholding agency's determination that impact of toxic air emissions from project was unknown because of incomplete data and absence of accepted means of conducting cumulative air contaminant health risk analysis).

[455] *Berkeley Jets*, 91 Cal.4th at p. 1370.

[456] *Id.*

[457] *Id.*; see CEQA Guidelines, §§ 15144-15145.

[458] *Laurel Heights I*, 47 Cal.3d. at p. 408; *State Water Resources Control Bd. Cases* (2006) 136 Cal.4th 674, 795.

the EIR's analysis as long as a reasonable explanation supporting the EIR's analysis is provided.[459] A lead agency may reject criticism on an issue as long as its determination is supported by substantial evidence.[460]

CEQA does not dictate the specific contents of an EIR, but rather leaves it to the lead agency to decide what impacts merit a detailed investigation, the methods for collecting and synthesizing data, the appropriate scope and depth of analysis, how to frame the EIR's discussion to present a useful and informative evaluation, and what conclusions to draw from the evidence. Because the lead agency is charged with resolving questions of fact, reviewing courts do not decide whether the agency correctly resolved disagreements about the validity or appropriateness of the technical analysis in the EIR, but only whether there is any substantial evidence in the record supporting it.[461]

Contention GS-11: The responses to comments are inadequate. (GS Petition, pp. 50-54)

Response GS-11: The agricultural petitioners argue that the Regional Board's master and individual responses to comments fail to comply with the requirements of CEQA Guidelines sections 15145 and 15088(c) because those responses dismiss as speculative, without a "thorough investigation," comments purporting to contain substantial evidence and, in doing so, fail to provide good faith, reasoned analyses in response to those comments. The Regional Board disagrees. The Regional Board's responses to comments provide good faith, reasoned analysis, based on thorough investigation, in response to each significant issue raised in comments and not already reflected in the FEIR. The Regional Board had the authority and discretion to determine the substantiality of evidence presented in comments, and it provided responses to each comment explaining how and why the Regional Board did, or did not, factor those comments into the FEIR.

Agencies' obligations in responding to comments are well documented in the Public Resources Code (PRC), the CEQA Guidelines, and related caselaw. CEQA does not require lead agencies to respond to every comment submitted, but only to the significant environmental issues presented by those comments.[462]

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[459] *Castaic Lake,* 180 Cal.4th at p. 243.

[460] *Laurel Heights I*, 47 Cal.3d. at p. 408; *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.5th 281, 297.

[461] See, e.g., *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435; *Goleta Valley*, 52 Cal.3d at pp. 566, 575; *Laurel Heights I*, 47 Cal.3d., at pp. 393, 409.

[462] CEQA Guidelines, §§ 15088(c), 15132(d), 15204(a); *Citizens for E. Shore Parks*, 202 Cal.4th at p. 568.

CEQA further provides that responses to comments need not be exhaustive; they need only demonstrate a good faith, reasoned analysis.[463] Failure to provide a specific response to a comment is not fatal if the response would be cumulative to other responses.[464] "Agencies generally have considerable leeway" regarding responses to comments and, when an agency adequately addresses an environmental issue in response to one comment, it "may refer to the prior response when addressing other commenters."[465] As the Regional Board indicated in its responses to comments, a lead agency is not required to conduct every test or perform all research, studies, or experimentation at the commenter's request.[466] When credible expert opinion suggests that the EIR's assessment of a significant impact is flawed and that further study is needed, a reviewing court may conclude that the EIR's analysis is fatally deficient unless the FEIR responds with a further evaluation or a reasonable explanation, supported by the evidence, for not doing so.[467] Nevertheless, if comments criticizing the EIR's treatment of an issue are adequately addressed with a reasoned analysis in response, a reviewing court will resolve any fact-based disputes in favor of the lead agency.[468] Finally, failure to discuss a particular comment is not a basis for setting aside an EIR if the EIR otherwise contains an adequate, good faith discussion of the issue in question.[469]

The Regional Board was not required to respond to every comment on the DEIR, but rather to each potentially significant environmental impact raised in those comments and supported by "relevant data and other supporting evidence such as expert opinions." To effectively respond to the myriad potential issues raised in the comments on the DEIR, the Regional Board compiled a set of Master Responses, categorized by common issue, as well as providing individualized responses to every comment raised in individual comment letters. As required by CEQA, the Regional Board provided good faith, reasoned analysis in response to each significant issue raised by commenters. However, where comments were duplicative in raising issues to which that Board had already responded, the Regional Board provided a general response pointing readers to where those existing responses could be found. Similarly, where comments were not supported by substantial evidence, the Regional Board provided a general response

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[463] CEQA Guidelines, § 15088(c); *Towards Responsibility,* 200 Cal.3d at 683; *SF Ecology Ctr.,* 48 Cal.3d at p. 596.

[464] *EPIC,* 44 Cal.4th at p. 483; *see Twain Harte,* 138 Cal.3d 664 (ruling that although some responses were not thorough, they were adequate if the various environmental documents were viewed as a whole).

[465] *EPIC*, 44 Cal.4th at p. 487, fn. 9.

[466] CEQA Guidelines, § 15204(a); FEIR, vol 3, at p. 3-606–3-607, AR2191–AR2192 (Response to Comment BN-112), *id.* at 3-611–3-612, AR2196–AR2197 (Response to Comment BN-138).

[467] *Flanders Found. v. City of Carmel-by-the-Sea*, 202 Cal.4th at p. 616; *Berkeley Jets*, 91 Cal.4th at p. 1362.

[468] *See*, *e.g.*, *Laurel Heights I*, 47 Cal.3d. at p. 409.

[469] *Cal. Oak Found. v. Regents of Univ. of Cal.* (2010) 188 Cal.4th 227, 265

noting its basis for determining that the evidence was not substantial (*e.g.*, that comments were conclusory, speculative, or otherwise unsupported).

Nevertheless, the agricultural petitioners argue that the Regional Board improperly dismissed comments allegedly containing substantial evidence, resulting from the Regional Board's not performing a "thorough investigation" of comments "in light of the whole record" because it (1) responded to comments on a paragraph-by-paragraph basis and (2) it dismissed individuals' and experts' comments as speculative or otherwise insubstantial without providing adequate facts or other evidence that a "thorough investigation" took place to support those conclusions.

As a preliminary note, the agricultural petitioners provide no explanation or evidence for the assertion that the Regional Board did not review comments "in light of the entire record." No legal standard by which the Regional Board's review can be judged is offered, nor explanation or evidence of what parts of the record were *not* considered. Instead, the only evidence offered that comments were not adequately considered is a selection of comments that received responses deeming them speculative or otherwise insubstantial, along with the contention that those comments *should* have been deemed substantial and because they were not, the Regional Board must not have considered them in "light of the entire record." Likewise, the agricultural petitioners suggest that the failure to reach their desired conclusions resulted from Regional Board's failure to perform a "thorough investigation" before dismissing comments. As evidence of this alleged failure, the agricultural petitioners point out that "[t]he Responses to Comments do not contain a 'thorough investigation' prior to dismissing the comment…"[470] However, the agricultural petitioners do not offer citation to any authority that requires responses to comments to *contain* thorough investigation, nor do they offer citation or explanation for how to adjudge the "thoroughness" of the Regional Board's investigation of comments prior to responding. Nor, for that matter, do the agricultural petitioners cite to any investigation that they *do* deem to be sufficiently thorough, for the sake of comparison.

Thus, it is not particularly clear how the evidence discussed below bears upon the Regional Board's review of comments "in light of the entire record" or the "thoroughness" of the Regional Board's investigation of significant impacts raised in comments. Moreover, the Regional Board disagrees that the examples provided by the agricultural petitioners are evidence of inadequate or improper consideration of and/or response to comments.

To the first point, the agricultural petitioners offer no authority to support their argument that comments should not be responded to on a paragraph-by-paragraph basis or that doing so shows that the Central Coast Water Board failed to consider comments "in light of the entire record." In fact, the agricultural petitioners' citation to *Western States Petroleum Assn. v. Superior Court* (1995) has no bearing on this issue whatsoever. The

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[470] GS Petition, at p. 52.

portion of that case cited in the GS Petition is a discussion of whether appellate courts reviewing agencies' quasi-legislative decisions may consider evidence outside of the administrative record. The court there was simply noting that,

> [T]he Legislature has expressly stated that the existence of substantial evidence depends solely on the record before the administrative agency. For example, in considering whether an environmental impact report must be prepared, the lead agency must determine whether there is "substantial evidence in light of the whole record " before indicating the project may have a "significant effect on the environment." (Pub. Resources Code, §§ 21080, subds. (c) & (d), 21082.2, subds. (a) & (d), italics added.) If we construe CEQA as a whole, as the rules of statutory interpretation require [citation omitted], we are left without any doubt that the Legislature intended courts to generally consider only the administrative record in determining whether a quasi-legislative administrative decision was supported by substantial evidence.[471]

It is unclear how the agricultural petitioners evaluated the adequacy of the Regional Board's responses to comments based on this passage. The agricultural petitioners' statutory references are likewise inapplicable to responses to comments. PRC sections 21080 and 21082.2 provide considerations for evaluating the substantiality of evidence in order to determine whether there is substantial evidence to support preparation of an EIR, rather than a Negative Declaration. These statutes have no apparent bearing upon or reference to the sufficiency of responses to comments on a DEIR, and the agricultural petitioners do not explain how they are related. As a result, it is unclear that the agricultural petitioners' contention here is based in law, rather than mere speculation as to the Regional Board's inadequacies.

To the second point, the agricultural petitioners provide three specious examples of how the Regional Board allegedly failed to perform a thorough investigation, in light of the entire record, in response to comments: (1) it dismissed numerous individual comments as speculative or not providing substantial evidence of previously undisclosed impacts; (2) its Master Response 9 to Cost Considerations failed to reference "two economic technical memoranda from ERA Economics on June 22, 2020 as well as technical memorandum from Exponent Review . . . [that] . . . detailed that the FEIR contained no economic analyses and that such an analysis can be conducted;" and (3) it dismissed Comments CH-52 through CH-82 as inapplicable based on the removal of the riparian and operation setback components of the DEIR but ignored those comments' substantial evidence as to potential impacts from the General Order's "blanket prohibition on the [unauthorized] disturbance and removal of native riparian vegetative

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[471] *Western States Petroleum Assn.*, 9 Cal.4th at p. 571.

cover."[472] However, these examples are unsupported by law or evidence and blatantly ignore the extensive evidence in the record showing that the Regional Board did properly consider and respond to comments.

Concerning the treatment of individuals' comments, the Regional Board disagrees with the agricultural petitioners' contention that, for responses to comments to be adequate, personal comments as to impacts on particular farms must be treated as substantial evidence. This assertion is based on a misstatement and overextension of law. The agricultural petitioners cite *Georgetown Preservation Society v. County of El Dorado* (2018) ("*Georgetown"*) in claiming that individuals' personal comments as to potential impacts constitute substantial evidence.[473] However, that case held that "lay opinions can provide substantial evidence to support a fair argument that a project may have a significant *aesthetic* impact on the environment, triggering the need to prepare an [EIR]."[474] This ruling relied explicitly upon *Pocket Protectors v. City of Sacramento* (2004) ("*Pocket Protectors*"), which stated even more clearly that "opinions of area residents, *if based on direct observation*, may be relevant as to *aesthetic impact* and may constitute substantial evidence in support of a fair argument; *no special expertise is required on this topic*."[475] Consequently, although the agricultural petitioners reference *Georgetown*'s support for consideration of lay opinions regarding aesthetic impacts,[476] this ruling extends only to nontechnical subjects, like aesthetics. Moreover, both cases illustrated the much lower evidentiary hurdle under CEQA that project opponents must clear to force an agency that prepared a negative declaration to prepare an EIR instead. That "fair argument" standard does not apply where, as here, the agency prepared an EIR in the first instance and opponents simply disagree with the EIR's conclusions. The agricultural petitioners similarly fail to acknowledge the specific language in *Pocket Protectors* clarifying that, to constitute substantial evidence, lay opinions must be "based on direct observation" and that lay opinions as to aesthetics, as opposed to other topics covered in an EIR, do not require "special expertise."

Thus, while the courts have acknowledged that certain, first-hand lay opinions as to aesthetic impacts *may* constitute substantial evidence to meet the "fair argument" standard, no such allowance has been made as to lay opinions concerning other, more technical topics covered in an EIR, such as economics. The agricultural petitioners' blanket claim that personal comments are substantial evidence is a misstatement of the applicability of the *Georgetown* decision. Furthermore, to the extent that some individual Dischargers' comments as to "personal on farm evidence" are based in "special expertise" sufficient to constitute substantial evidence in cases dealing with those

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[472] GS Petition, at 51-54.

[473] *Id.*, at p. 51, fn.124.

[474] *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 363 (emphasis added).

[475] *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 937 (emphasis added).

[476] GS Petition, at p. 51, fn.124.

particular farms, it is not clear that individuals' expertise regarding their own farming operations can translate to the expertise required to evaluate regionwide environmental impacts due to the expansion of a regulatory program.

Misstatement of law notwithstanding, the record clearly shows that the Regional Board gave thorough and thoughtful consideration to the information provided in individuals' comments on the DEIR. This is reflected in the numerous individual and master responses to comments, as well as the modifications to the Draft Agricultural Order (DAO) made in response to comments. This included revising the EIR to reflect changes made in the Revised Draft Agricultural Order (RAO)/Proposed Agricultural Order (PAO), as reflected in the strikeout/underline text include in the FEIR, Volume 1.[477]

The agricultural petitioners' contention that the Regional Board acted improperly in dismissing, with cursory responses, comments offering speculative or insufficient information is likewise erroneous. As noted previously, CEQA does not require lead agencies to respond to every comment submitted, but only to the significant environmental issues presented by those comments.[478] Comments that do not raise significant environmental questions or that repeat other comments need not be individually responded to.[479] General comments and comments that consist merely of speculation or unsupported criticism may be rejected or answered with only a general response.[480] In responding to comments, lead agencies are not required to accept commenter's assumptions; comments should be detailed and should include relevant data and other supporting evidence such as expert opinions.[481] By dismissing speculative or otherwise insubstantial comments, the Regional Board ensured that the analysis in the FEIR was based on substantial evidence in the record, rather than individuals' unsupported conclusions. In responding to comments that did not contain substantial evidence of significant environmental impacts not already considered in the DEIR, the Regional Board provided explanations for not amending the EIR based on those comments. This is what CEQA requires. Agricultural petitioners' argument that conclusory comments merit substantial responses is a clear misstatement of a lead agency's duties under CEQA.

To that end, the agricultural petitioners' claim that Response to Comment BN-138 is an example of an improper response to comments is erroneous. The GS Petition alleges that this response was conclusory and "ignored how [Comment BN-138] adds to the substantial evidence in light of the whole record . . . " but presents no actual discussion

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[477] *See* FEIR, vol. 3, at p. 2-47, AR1576 ("Based on comments received, the riparian area management requirements related to riparian and operational setbacks have been removed from RAO 4.0").

[478] CEQA Guidelines, §§ 15088(c), 15132(d), 15204(a); *Citizens for E. Shore Parks v. State Lands Comm'n* (2011) 202 Cal.4th 549, 568.

[479] *Citizens for E. Shore,* 202 Cal.4th 568; *EPIC*, 44 Cal.4th at 483, 487.

[480] 2 Kostka & Zischke, *Practice Under CEQA*, § 16.11.

[481] CEQA Guidelines, § 15204(c).

of the contents of that response. To the contrary, response to comment BN-138 explicitly addresses the contention raised in comment BN-138 before concluding, based on several citations to the DEIR and the CEQA Guidelines, that the comment did not contain substantial evidence of a significant environmental impact not already considered in the EIR. Nor does the GS Petition discuss the numerous other responses to comments in the EIR that reference other parts of the record, including other comments or sections of the EIR. Nor do the agricultural petitioners offer suggestion of any acceptable alternative approach for responding to thousands of comments from dozens of individuals and organizations, so it is unclear that the agricultural petitioners would have deemed *any* approach adequate. Rather, the only evidence offered that the Regional Board's responses to comments were not reached "in light of the entire record" or based on "thorough investigation" is the fact that certain comments were dismissed.

To the second example, the agricultural petitioners claim that Master Response 9 is inadequate because it is too short and because it states that "agricultural stakeholders only raised cost concerns and provided no additional detail," despite those stakeholders' provision of three expert memoranda.[482] The agricultural petitioners further allege that "These comments detailed that the FEIR contained no economic analyses and that such an analysis can be conducted."[483]

These contentions are plainly false. As discussed in response to Contention GS-12, subsection E, the FEIR contains an entire chapter dedicated to economic analysis (FEIR Volume 1, Chapter 3.5), although this is not generally required by CEQA, as well as significant discussion of economics throughout other chapters (*e.g.*, FEIR Volume 1, Chapters 3.1 *Agriculture and Forestry Resources*, AR0601-0627, and 5.4 *Cumulative Impacts*, AR0908-0920). Therefore, the agricultural petitioners' assertion that "the FEIR contained no economic analysis" is simply wrong. Likewise, the contention that Master Response 9 is too short plainly ignores that Master Response 9 directs reviewers to the economic impact analysis in the FEIR,[484] and is bolstered by the 278 individual responses to comments raised in the three expert memoranda. Many of these responses refer readers to not only Master Response 9, but also Master Response 10, which explicitly discusses the example economic analyses that the agricultural petitioners allege was ignored and explains why those analyses were dismissed as speculative.[485] As a result, it appears that the agricultural petitioners' dissatisfaction with Master Response 9 stems from their failure to properly review the FEIR, in light of the whole record, rather than any impropriety on the part of the Regional Board. For further discussion of the Regional Board's economic analysis, including its consideration of the

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[482] GS Petition, at pp. 52–53.

[483] *Id.*, at 53.

[484] FEIR, vol. 1, at p. 3.5-1–3.5-42, AR0697–AR0738.

[485] *See* FEIR, vol. 3, at pp. 3-484–3-590, AR2069–AR2175 (Individual Comments BN-288 to BN-566 [ERA Economic Reports 1 and 2 and Exponent Report]); *id.*, at pp. 3-640–3-666, AR2225–AR2251 (Responses to Comments BN-288 to BN-566).

expert memoranda submitted by commenters, please refer to response to Contention GS-12, subsection E.

In the third example, the agricultural petitioners allege that comments CH-52 through CH-82 were improperly dismissed because those comments raised potentially significant impacts related to the General Order's "prohibition on riparian disturbances in Part 2, Section D, ¶ 23."[486] However, this contention ignores that the General Order's prohibition on unauthorized disturbance or removal of native riparian vegetative cover is not a new requirement, but rather a clarification of an existing requirement under the 2017 Agricultural Order.[487] In fact, this issue was addressed in the Regional Board's Master Response 8.2 on the RAO, which states:

> The CCWB acknowledges that specific language in the prohibition on disturbance of existing, naturally occurring, and established native riparian vegetative cover differs from the language used in Agricultural Order 3.0. The language of the prohibition in RAO 4.0 is not intended to exceed the requirement in Agricultural Order 3.0. RAO 4.0 refines the provision by specifically stating that disturbance of certain riparian vegetative cover is prohibited, rather than that Dischargers must "maintain" certain riparian vegetative cover, which was the language in Agricultural Order 3.0. The RAO 4.0 provision further clarifies that "Dischargers must avoid disturbance in riparian areas to minimize waste discharges and protect water quality and beneficial uses." Finally, the prohibition allows for authorized disturbances, such as those required by California Farm and Agriculture Code section 5403. (RAO 4.0, Order, page 44, paragraphs 24-25).[488]

As a result, any potentially significant impacts of this existing prohibition do not fall within the scope of significant impacts that may arise from the adoption of the General Order. Lead agencies are not required to address impacts that do not arise from the Project discussed in an EIR.[489] Thus, the Regional Board properly disregarded comments such as CH-52 through CH-82 because, as generally stated in the responses to those comments, they raised potential impacts that were not resultant from the General Order.[490]

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[486] GS Petition, at p. 54.

[487] *See*, *e.g.*, FEIR, vol. 1, at p. 4-41, AR0905 (noting "the Proposed Project . . . would maintain Agricultural Order 3.0's prohibition on removal of existing riparian vegetation").

[488] Response to Comments, RAO, at p. 51, AR16577.

[489] CEQA Guidelines, § 15126.2(a).

[490] *See* FEIR, vol. 3, at pp. 3-897–3-900, AR2482-2485 (Responses to Comments CH-52–82); *id.*, at p. 2-47, AR1576 (Master Response 2.8.8).

In conclusion, the Regional Board complied with the requirements of CEQA when it responded to public comments on the DEIR for the General Order. The Regional Board performed a thorough investigation of potentially significant impacts raised by commenters that were not already considered in the DEIR and, in such cases, provided good faith, reasoned responses to those comments. Where comments did not contain substantial evidence or were speculative or duplicative, the Regional Board responded with explanation for disregarding those comments. Contrary to the agricultural petitioners' contentions, the Regional Board was not required to provide extensive, substantial responses to *every* comment it received on the DEIR, nor did it ignore substantial evidence raised in comments.

Contention GS-12: The FEIR contains an inadequate assessment of significant impacts and effects on the environment. (GS Petition pp. 54-71)

Response GS-12: The Central Coast Water Board disagrees. The agricultural petitioners put forth several arguments in support of this contention, to which the Regional Board responds below in subsections A through E.

A. Significance Criteria to Determine Significant Effects (GS Petition, pp. 54-56)

The agricultural petitioners first argue that the significance criteria to determine significant effects was improper. The Regional Board previously addressed this issue in its written responses to comments on the FEIR.[491]

Under CEQA, the lead agency is responsible for determining whether an adverse environmental effect identified in an EIR should be classified as "significant" or "less than significant.[492] The lead agency has discretion to formulate standards of significance for use in an EIR, which requires the agency to make a policy judgment distinguishing adverse impacts.[493] In doing so, a lead agency's choice of thresholds must be "based to the extent possible on scientific and factual data" and must reflect "an exercise of reasoned judgment" founded on substantial evidence.[494] The standards of significance used in an EIR can be based on a number of sources, including determinations by the lead agency exercising its own judgment, in reliance on the judgment of the experts who

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[491] FEIR, vol. 1, at pp. 3.0-1–3.0-2, AR0595–AR0596; *id.*, vol. 3, at pp. 2-52–2-55, AR1581–AR1584 (Master Response 2.10.2).

[492] CEQA Guidelines, § 15065(b).

[493] *Baykeeper v. State Lands Comm'n*, 242 Cal.4th at 227; *North Coast Rivers Alliance*, 216 Cal.4th at p. 625.

[494] CEQA Guidelines, § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts*, 3 Cal.5th at p. 515; *Mission Bay*, 6 Cal.5th at p. 206.

prepare the EIR, or following the standards in the initial study checklist in CEQA Guidelines Appendix G.[495]

In this case, the significance criteria used in the FEIR were generally drawn from the State CEQA Guidelines, Appendix G: Environmental Checklist Form (as updated in December 2018).[496] The Central Coast Water Board and its expert who prepared the EIR modified or expanded these criteria as necessary to reflect relevant scientific and factual data as well as other substantial evidence contained in the record.[497] Furthermore, in response to substantial public and stakeholder concern, the Regional Board developed significance criteria for evaluating economic effects of the General Order. Because economics are not typically evaluated in an EIR and thus Appendix G does not contain significance criteria for economics, the Regional Board relied upon the CEQA Guidelines' direction and requirements with respect to economic impacts. As described in Master Response 10 to comments on the FEIR,[498] the CEQA Guidelines clearly state that economic and social effects of a project are significant only so far as they would result in an adverse physical change in the environment. Therefore, in accordance with CEQA, the Central Coast Water Board limited its analysis of economic effects from the General Order to those effects which would result in an adverse physical change in the environment. Because implementation of the General Order would be on agricultural lands and the concerns expressed by the public and stakeholders were primarily focused on effects related to agriculture, the significance criteria employed by the Regional Board focused on the potential for conversion of agricultural land to non-agricultural uses.

Please refer to response to Contention GS-12, subsection E, for additional discussion of the EIR's economic analysis.

After the Regional Board established its initial significance criteria in the DEIR, it considered and responded to public comments addressing those criteria and raising potentially significant impacts to be considered before the criteria were finalized.[499] Under CEQA, a lead agency is required to address comments containing evidence tending to show that an impact might be significant despite the significance criteria in

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[495] *Clover Valley Found. v. City of Rocklin,* 197 Cal.4th 243 (lead agency has discretion to determine significance)*; Mount Shasta Bioregional Ecology Ctr. v. County of Siskiyou*, 210 Cal.4th at p. 204 (significance standards based on expert report); *Napa Citizens,* 91 Cal.4th at p. 362 (significance standard developed by drafters of EIR); *Mission Bay,* 6 Cal.5th at p. 192.

[496] FEIR, vol. 1, at pp. 3.0-1–3.0-2, AR0595–AR0596; *id.,* at pp. 3.1-19–3.1-20, AR0619–AR0620; *id.*, at p. 3.5-34, AR0730.

[497] *See*, *e.g.*, *id.*, at p. 3.5-3.5-34, AR0730 (use of project-specific significance criteria for economic impacts analysis); *see generally id.*, at p 2-53, AR1582 (Master Response 2.10.2).

[498] *See* FEIR, vol. 3, at 2-51–2-55, AR1580–AR1584 (Master Comment 2.10.1 and Master Response 2.10.2).

[499] *See*, *e.g.*, *id.*, vol. 3, at pp. 2-51–2-52, AR1580–AR1581 (Master Comment 2.10.1); *see also*, *e.g.*, *id.*, at p. 3-618, AR2203 (Response to Comment BN-173); *id.*, at p. 3-624, AR2209 (Response to Comment BN-204); *id.*, at p. 3-647, AR2232 (Response to Comment BN-329).

the EIR.[500] If the agency does not respond by changing the standard, it should respond by explaining the factual and policy basis for the standard used and why the project meets the standard.[501] A lead agency's response to a comment regarding the validity of a threshold will be upheld if it is supported by substantial evidence.[502] In responding to comments that contained evidence challenging the validity or sufficiency of the proposed significance criteria, the Regional Board responded with citations to substantial evidence to support its use of those thresholds.[503] However, where comments contained unsubstantiated claims or speculation, the Regional Board considered those comments but was not required to provide substantive responses.[504] As discussed in response to Contention GS-11, the Regional Board's responses to comments were adequate and proper.

Nevertheless, the agricultural petitioners specifically allege that the significance criteria used in FEIR Volume 1, Chapters 3.1 *Agriculture and Forestry Resources* and 3.5 *Economics* are improperly "flawed and narrow" because these criteria failed to capture and analyze significant impacts raised in certain comment letters.[505] The Regional Board considered and responded to each comment cited by the agricultural petitioners, noting that those comments failed to identify specific significance criteria or significant impacts not already acknowledged and/or analyzed in the DEIR or that those comments were too insubstantial or speculative to be relied upon.[506] As noted in Master Response 10 to comments on the DEIR, as well as FEIR Volume 1, Chapters 3.1 and 3.5,

> [I]t is not possible to predict which growers will implement which management practices in which locations, and there are numerous potential options for individual growers to meet the discharge, application, and receiving water limits included in the Order. Additionally, the specific impacts of any increased…compliance costs would depend on the unique characteristics of individual ranches/operations, including

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[500] *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.4th 1099, 1111.

[501] *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.4th 1341, 1355.

[502] *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.4th 1059, 1072.

[503] *See*, *e.g.*, FEIR, vol. 3, at 2-52–2-55, AR1581–AR1584 (Master Response 2.10.2).

[504] *Id.*, vol 1., at p. 3.0-2, AR0596 (noting that CEQA does not require the lead agency to consider impacts that are speculative); CEQA Guidelines, §§ 15064(d)(3) (an indirect change is considered only if reasonably foreseeable; a speculative change is not reasonably foreseeable), 15064(f)(5) (argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence).

[505] GS Petition, at pp. 55–56, fns. 152–153.

[506] *See* FEIR, vol. 3, at pp. 2-52–2-55, AR1581–AR1584; *see*, *e.g.*, *id.*, at p. 3-618, AR2203 (Response to Comment BN-173); *id.*, at p. 3-618, AR2203 (Response to Comment BN-174); *id.*, vol. 3, at p. 3-619, AR2204 (Response to Comment BN-179); *id.*, vol. 3, at p. 3-624, AR2209 (Response to Comment BN-204); *id.*, vol. 3, at pp. 3-635–3-636, AR2220–AR2221 (Response to Comment BN-244).

> their crop mix, operating costs/capital, cash reserves, and other variable factors.[507]

As a result, although the Regional Board did not adjust the significance criteria challenged in these comments, the Regional Board satisfied its burden under CEQA by responding to those comments, as necessary, with factual and policy bases for their continued use of the challenged criteria. Thus, the Regional Board's significance criteria were properly established and supported by substantial evidence in the record.

The agricultural petitioners, on the other hand, fail to provide evidence or explanation as to how the applied significance criteria are improper and suggest that the Regional Board should ignore the requirements of CEQA in order to reach the agricultural petitioners' desired conclusions of significance.

As stated in the GS Petition, under the Regional Board's significance criteria for economic impacts, "a significant impact can occur only if the entire farm goes out of business and all agricultural lands are converted to non-agricultural uses."[508] The agricultural petitioners allege that "by using such narrow criteria, the FEIR improperly excludes analyzing significant impacts resulting from the Project," such as changes to crop types, changes to crop rotations, or decreased farm revenues.[509] As evidence, the agricultural petitioners cite to a series of letters submitted during the EIR drafting process and as comments on the DEIR to which the Regional Board has already responded.[510] Those responses generally noted that these letters were speculative or did not otherwise contain substantial evidence that these impacts would result in adverse physical changes to the environment that were not already considered in the FEIR. Nevertheless, the agricultural petitioners did not provide any additional evidence or explanation to support their claims here.

Instead, the agricultural petitioners simply relist previously raised, unsubstantiated, all-but-hypothetical impacts that they claim will be significant and allege that the Regional Board's significance criteria is "flawed and narrow" because that criteria did not lead the Regional Board to the same conclusions as the commenters. This contention all but ignores the premise that, under CEQA, "an economic or social change by itself shall not be considered a significant effect on the environment."[511] The GS Petition does not explain or provide substantial evidence as to how the alleged impacts would constitute significant impacts on the physical environment; nor does it point to such evidence or explanation in its extensive footnote detailing the range of letters alleged to support this

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[507] *Id.*, vol. 3, at p. 2-52, AR1581 (Master Response 2.10.2); *see id.*, vol. 2, at p. 3.1-19, AR0619; *id.*, vol. 2, at p. 3.5-35, AR0731.

[508] GS Petition, at p. 56.

[509] *Id.*

[510] GS Petition, at p. 56, fn. 152.

[511] CEQA Guidelines, § 15382.

claim; nor does the GS Petition explain how the criteria used in the FEIR *do not* account for physical impacts related to these and other economic effects of the General Order; nor do the agricultural petitioners suggest alternative criteria that *would* adequately capture, based on substantial evidence, physical impacts to the environment resulting from reasonably foreseeable economic effects. Instead, the contention is simply that the Regional Board must have erred in developing its significance criteria because it did not reach the agricultural petitioners' desired conclusions. This is not how CEQA is designed to work.

CEQA requires lead agencies to make determinations based on substantial evidence, and that is what the Regional Board did here. The Regional Board complied with CEQA in developing its significance criteria for evaluating whether foreseeable impacts of the General Order would be "significant" or "less-than-significant." These criteria were developed according to the criteria outlined in CEQA Appendix G, as well as scientific and factual data contained in the record, and were carefully considered in light of public comments containing substantial evidence regarding the criteria. The Regional Board even developed its own criteria to evaluate impacts not generally covered in EIRs. Conversely, the agricultural petitioners offer no substantial evidence that the FEIR significance criteria were inadequate or improperly developed; instead, they flip the purpose of CEQA on its head, suggesting that the Regional Board not reaching certain conclusions is evidence of a failed process, rather than evidence that the process worked exactly as intended.

B. Assessment of Significant Impacts and Effects (GS Petition, p. 57)

The agricultural petitioners also argue that the Central Coast Water Board's assessment of significant impacts and effects was inadequate. The Central Coast Water Board disagrees.

The Central Coast Water Board conducted a good faith, adequate analysis of the environmental impacts of the proposed General Order (Proposed Project). The EIR analyzed impacts to resource categories in accordance with the CEQA Guidelines, Appendix G significance criteria. Where little or no potential existed for Proposed Project activities to impact certain resource categories (i.e., aesthetics, geology, soils, and seismicity, land use and planning, mineral resources, population and housing, public services, recreation, transportation and traffic, and utilities and service systems), these resource categories were dismissed from detailed analysis in the EIR. Preliminary analysis of potential impacts to these resource categories was provided in the initial study,[512] which was circulated for public review with the Notice of Preparation.[513] Additionally, the rationale for eliminating certain sections from detailed analysis in the EIR was described for each applicable resource category in Section 3.0, "Introduction to

[512] Initial Study for Agricultural Order for Discharges from Irrigated Lands, AR35457–AR25565.

[513] Notice of Preparation, AR35568.

the Environmental Analysis" of the EIR.[514] The resource categories that were evaluated in full detail in the EIR were done so properly, in accordance with Appendix G significance criteria, and included in EIR Sections 3.1 to 3.12 in Chapter 3, *Environmental Analysis.*[515]

As addressed above, the Central Coast Water Board included a section of the EIR that analyzed economic impacts, which is not typically included in EIRs. [516] As described in the responses to comments, the CEQA Guidelines clearly state that economic and social effects of a project are significant only insofar as they would result in an adverse physical change in the environment.[517] Therefore, in accordance with CEQA, the Central Coast Water Board limited its analysis of economic effects from the Proposed Project to those effects which would result in an adverse physical change in the environment. The analysis in Section 3.5, "Economics" focused on the potential physical effects on agricultural land because the General Order would be conducted on agricultural lands and the concerns expressed by the public and stakeholders were primarily focused on effects related to agriculture. The significance criteria employed by the Central Coast Water Board focused on the potential for conversion of agricultural land to non-agricultural uses (refer to response to Contention GS-12, subsection E, for additional discussion of the EIR's economic analysis).

The agricultural petitioners allege that "The FEIR fails to comply with the requirements of CEQA in that it fails to adequately disclose, analyze and/or mitigate the Project's environmental impacts as required by law, and its conclusions regarding the Project's environmental impacts are not supported by substantial evidence."[518] In a footnote to this statement, the agricultural petitioners state that the "environment," under CEQA, includes the agricultural environment, citing to the description of the environment included in CEQA Guidelines, section 15360. Given this definition, the agricultural petitioners argue, the "FEIR's Environmental Analysis of Agricultural and Forestry Resources must review [sic] of the Project's potential impacts on [sic] agricultural environment and analyze any resulting direct, indirect, and/or cumulative impacts that may impact agriculture."[519] The agricultural petitioners do not acknowledge that the EIR included an analysis of impacts to agriculture and forestry resources in Section 3.1, "Agriculture and Forestry Resources" of the EIR.[520] As described above, this analysis was conducted in accordance with the recommended significance criteria included in Appendix G of the CEQA Guidelines, which are as follows:

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[514] FEIR, vol. 1, at pp. 3.0-3–3.0-6, AR0597–AR0600.

[515] *Id.*, vol. 1, at pp. 3.1-1–3.12-6, AR0601–AR0864.

[516] *Id.*, vol. 1, at pp. 3.5-1–3.5-42, AR0697–AR0738.

[517] *Id.*, vol. 3, at pp. 2-51–2-55, AR1580–AR1584 (Master Response 2.10).

[518] GS Petition, at p. 57.

[519] *Id.*, at p. 57, fn. 154.

[520] FEIR, vol. 1, at pp. 3.1-1–3.1-28, AR0601–AR0628.

A. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program (FMMP) of the California Resources Agency, to non-agricultural use;

B. Conflict with existing zoning for agricultural use, or a Williamson Act contract;

C. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resource Code [PRC] Section 12220[g]), timberland (as defined in PRC Section 4526), or timberland zoned Timberland Production (as defined in Government Code Section 51104[g]);

D. Result in the loss of forest land or conversion of forest land to non-forest use; or

E. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use.[521]

While many of these significance criteria, and much of the analysis in Section 3.1, "Agriculture and Forestry Resources," of the EIR, may be said to pertain to the "direct" impacts to agriculture and forestry resources, the EIR also considered potential "indirect" impacts to agricultural land in the economics section (Section 3.5, "Economics").[522] This analysis included the potential for increased costs of compliance to result in conversion of agricultural land to non-agricultural uses. The significance criteria selected were:

A. Increase costs for growers to such a degree that it would cause or result in growers going out of business, such that agricultural lands would be converted to non-agricultural uses;

B. Disproportionately affect small farms or ranches due to increased implementation, monitoring, or reporting costs, such that these farms would b forced to go out of business, resulting in conversion of agricultural lands to non-agricultural uses.[523]

Further, the EIR evaluated and discussed the potential cumulative impacts on agriculture and forestry resources in Chapter 5, *Other Statutory Considerations* of the EIR.[524]

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[521] CEQA Guidelines, App. G.

[522] FEIR, vol. 1, at pp. 3.5-1–3.5-42, AR0697–AR0738.

[523] *Id.*, vol. 1, at 3.5-33, AR0730.

[524] *Id.*, vol. 1, at pp. 5-10–5-12, AR0916–AR0918.

Although the DEIR found significant and unavoidable impacts to agricultural resources as a result of the riparian setback requirements included in the Draft Agricultural Order (DAO), with the removal of the riparian area management requirements related to setbacks in the Revised Draft Agricultural Order (RAO), the FEIR found that impacts to agricultural resources from the Proposed Project would be less than significant.[525] Similarly, the EIR's analysis found that, while costs of compliance would increase for Dischargers subject to the General Order, these costs would still likely represent a relatively minor component of an individual Discharger's total costs. Further, it would be speculative to conclude that any increased costs would cause a Discharger to go out of business and sell his/her lands, or otherwise result in agricultural land potentially being converted to non-agricultural uses.[526] Finally, with removal of the setback requirements, the FEIR found that cumulative impacts on agricultural resources would be less than considerable as the RAO/Proposed Agricultural Order (PAO) would not require that any current agricultural lands be taken out of production or converted to non-agricultural uses, and the potential for increased costs of compliance to result in conversion of agricultural land to non-agricultural uses is speculative.[527]

The only concrete example provided by the agricultural petitioners of an aspect of the "agricultural environment" that the EIR failed to address is "resulting impacts on irrigation management such as increased salinity of the soil."[528] The agricultural petitioners state that "[i]ncreased 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;"[529] however, the agricultural petitioners fail to describe how the requirements under Agricultural Order 4.0 could result in increased salinity of the soil or other related impacts.

The General Order would require that Dischargers develop and implement an Irrigation and Nutrient Management Plan (INMP) that addresses both groundwater and surface water, such as to meet the fertilizer nitrogen application limits and nitrogen discharge targets and limits.[530] This would include planning and management practice implementation and assessment that results in compliance with the applicable targets and limits.[531] The General Order provides three different compliance pathways for calculating nitrogen discharge and/or nitrogen removed, such as to meet the nitrogen discharge targets and limits,[532] and there are numerous potential management practices

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[525] *Id.*, vol. 1, at pp. 3.1-20–3.1-27, AR0620–AR0627.

[526] *Id.*, vol. 1, at pp. 3.5-41, AR0737.

[527] *Id.*, vol. 1, at pp. 5-11–5-12, AR0917–AR0918.

[528] GS Petition, at p. 57, fn. 154.

[529] *Id.*

[530] *See* General Order, at pp. 21–22, AR0024–AR0025.

[531] *Id.*, at p. 22, AR0024.

[532] *Id.*, at pp. 23–24, AR0026–AR0027.

that a given Discharger could potentially employ to reduce their fertilizer applied and nitrogen discharged. Table 2-9 in Chapter 2, *Project Description* of the FEIR, Volume 1, lists reasonably foreseeable management practices as determined from available literature, including practices to reduce nutrient and salt loading to surface water and groundwater.[533] Based on review of data submitted as part of 2017 Agricultural Order compliance, as shown in Table 2-8 in Chapter 2 of the FEIR, Volume 1, it is apparent that 84 percent of reporting acreage already maintain their irrigation system to maximize efficiency and minimize losses.[534]

In short, the agricultural petitioners have not provided substantial evidence that the Proposed Project would result in impacts on irrigation management such as increased salinity of the soil. At minimum, it would have to be said that it is speculative whether compliance with the General Order requirements could increase soil salinity in a given location, since the General Order does not mandate that an individual Discharger implement any particular management practice or irrigation management technique. A Discharger would simply need to meet the fertilizer application limits and nitrogen discharge targets and limits included in the General Order (as well as comply with other aspects of the General Order that would not be anticipated to affect soil salinity).

In a similar way, the agricultural petitioners allege that the Central Coast Water Board did not consider data, facts, evidence, and personal knowledge provided to the Central Coast Water Board, implying that this led to significant impacts not being properly identified.[535] As stated by the agricultural petitioners: "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."[536] However, the agricultural petitioners do not identify any data, facts, evidence, or personal knowledge that would have led to a different conclusion for a given impact evaluated in the EIR.

The agricultural petitioners cite to numerous letters and other materials submitted by agricultural stakeholders as evidence that significant impacts to agricultural lands could occur; [537] however, many of these letters were submitted during past review periods, such as the General Order Conceptual Regulatory Requirement Options Tables review period (November 16, 2018 to January 22, 2019). Other letters cited to by the agricultural petitioners are from the CEQA scoping period (February 16, 2018 to April 30, 2018), while others were from the DEIR review period (February 21, 2020 to

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[533] FEIR, vol. 1, at pp. 2-39–2-41, AR0587–AR0589.

[534] *Id.*, vol. 1, at p. 2-31, AR0579.

[535] GS Petition, at p. 57.

[536] *Id.*

[537] *Id.*, at p. 56, fn. 152.

June 22, 2020). The Agricultural Association Partners[538] took a similar approach in their comment letter on the DEIR, by repeatedly citing generally to numerous stakeholder letters submitted during previous comment periods as "substantial evidence of potential impacts." [539] In all instances, changes were made to the General Order since these comment letters were submitted, largely in ways that would reduce impacts on agricultural lands and reduce costs of compliance. Specifically, since the majority of the cited letters were submitted, the General Order has been revised to:[540]

(1) Add a discount factor for organic fertilizers;

(2) Add a nitrogen scavenging credit for cover crops and high carbon amendments;

(3) Add a third-party alternative compliance pathway for groundwater protection;

(4) Add third-party program priority areas and follow-up implementation and work plan due dates for surface water protection;

(5) Streamline total nitrogen applied (TNA) and INMP summary reporting section;

(6) Streamline surface water protection requirements section;

(7) Remove slope and certified sediment and erosion control plan requirements for impermeable surfaces;

(8) Remove some riparian habitat management requirements (i.e., riparian area management plan, and operational and riparian setbacks), but with continued and modified requirements to document and maintain existing riparian areas.

Given all of these changes made in the RAO, many of which were made in response to concerns and suggestions from the agricultural community, much of the information and assertions in comment letters submitted during the earlier phases of the General Order

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[538] The Agricultural Association Partners included Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, Monterey County Farm Bureau, Western Growers Association, Western Plant Health Association and California Farm Bureau Federation, with support from California Strawberry Commission, California Association of Pest Control Advisors, Monterey County Vintners & Growers Association, 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.

[539] *See* FEIR, vol. 3, at pp. 3-438– 3-439, AR2023–AR2024 (Comments BN-127 to BN-136); *id.*, vol. 3, at pp. 3-440–3-441, AR2025–AR2026 (Comments BN-139 to BN-145); *id.*, vol. 3, at p. 3-444, AR2029 (Comments BN-161 to BN-170); *id.*, vol. 3, at pp. 3-445–3-446, AR2030–AR2031 (Comments BN-175 to BN-184).

[540] *See id.*, vol. 1, at pp. 1-8–1-9, AR0544–AR0545.

development process is outdated and incongruous. In particular, the removal of the operational and riparian setback requirements in the final adopted General Order completely negates many of the previous comments submitted on the Conceptual Regulatory Requirements Options Tables, DAO, and DEIR, the latter of which heavily focused on the alleged impacts of the operational and riparian setback requirements. Rather than provide specific discussion of the ways in which the adopted General Order would result in a significant impact to the physical environment not identified in the FEIR, the agricultural petitioners have made only vague statements and cited generally to dated comment letters submitted on previous iterations of the General Order, much of which are no longer relevant.

In fact, the record clearly shows that the Central Coast Water Board gave thorough and thoughtful consideration to the "data, facts, evidence, and personal knowledge presented and written and oral comments" in developing the General Order. This is reflected in the multiple public comment and review periods, and the modifications to the DAO made in response to concerns and suggestions. Accordingly, the EIR provided a good faith and adequate evaluation of impacts pursuant to the CEQA statute and guidelines. This included revising the DEIR analysis to reflect the changes made in the RAO/PAO, as reflected in the strikeout/underline text included in the FEIR, Volume 1. Again, the changes to the DAO made in the RAO/PAO largely had the effect of reducing impacts on agricultural lands and reducing the costs of compliance for Dischargers. In preparing the EIR, the Central Coast Water Board considered the comments relevant to the environmental analysis that were submitted during the scoping period for the DEIR,[541] as well as comments related to the environmental analysis that were submitted during other public review periods related to the Order development process. The EIR evaluated an alternative that was submitted by members of the agricultural community during the Conceptual Regulatory Requirement Options review period.[542]

In conclusion, the analysis included in the EIR is adequate and in accordance with the CEQA Guidelines. The Central Coast Water Board clearly considered the relevant information provided by stakeholders and members of the public during preparation of the EIR and development of the General Order. The agricultural petitioners have provided no specific evidence or information which would support their assertion that "the Project will result in significant environmental impacts that the FEIR fails to address or mitigate."[543]

C. Burden of Proof and Determination of Significance (GS Petition, pp. 57-60)

In further support of the contention that the FEIR contains an inadequate assessment of significant environmental impacts, the agricultural petitioners assert that the Regional Board improperly shifted the burden of proof and determination of significance to the

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[541] *See id.*, vol. 1, at pp. 1-6–1-7, AR0542–AR0543.

[542] *See id.*, vol. 1, at pp. 4-12–4-28, AR0876–AR0892.

[543] GS Petition, at pp. 57.

public. Agricultural petitioners assert that the Regional Board would necessarily have reached petitioners' desired conclusions had the Regional Board not hidden "behind its own failure to gather relevant data" and "ignore[d] substantial relevant evidence…contained throughout the administrative record" when concluding that there was not substantial evidence that the General Order would result in significant economic, agricultural, or "project impacts."[544] As discussed in responses to Contentions GS-12, subsections A and B, above, the Regional Board disagrees that its significance criteria and assessment of significant impacts were inadequate.

Furthermore, the Regional Board strongly disagrees that it somehow shifted its burden of proof under CEQA to the public merely by reaching conclusions that differ from those of the agricultural petitioners. CEQA, by its design, incorporates significant public participation at every stage, from recommendations that a lead agency should assess certain impacts to critiques upon the substance and form of a lead agency's conclusions. It is through this robust process that the core goals of CEQA are achieved: avoiding environmental harm and informing the public and decision-makers of potential harms and avenues by which the harms may be avoided. Ultimately, however, it is the responsibility of the lead agency, in its discretion, to reach final conclusions as to the significance of foreseeable adverse environmental impacts and the measures needed to avoid or mitigate those impacts. "As the [California] Supreme Court has cautioned, "A project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR.'"[545] If members of the public disagree with a lead agency's conclusions, they may challenge them, as the agricultural petitioners have done here; this is not "shifting the burden of proof," but simply keeping with the process of government.

The Regional Board previously addressed this contention, which is a near verbatim recitation of comments received, in its written responses to comments on the DEIR.[546] As noted in Master Response 2.10.2, "some commenters state[d] that the DEIR improperly shifts the burden of proof of environmental impacts, including those arising from increased costs of compliance, to the public. These commenters argue[d] that the DEIR should not rely on economic impacts being "speculative" to reach significance conclusions of less than significant."[547] In its responses to those comments, the Regional Board stated, in relevant parts, that the commenter's assertion as to burden of proof was "a gross oversimplification" of the lead agency's duty to determine, based on substantial evidence, whether a project may result in a significant effect on the environment;[548] that "pursuant to [CEQA Guidelines] Section 15046, an effect shall not

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[544] *Id.*, at pp. 59–60.

[545] *National Parks & Conserv. Ass'n v. County of Riverside* (1999) 71 Cal.4th 1341, 1359-61, citing *Laurel Heights I*, 47 Cal.3d. at p. 415.

[546] FEIR, vol. 3, at pp. 2-51–2-55, AR1580–AR1584 (Master Response 10); *id.*, at pp. 3-437–3-441, AR2022–AR2026 (Comments BN-123 through BN-147).

[547] *Id.*, vol. 3, at pp. 2-51–2-52, AR1580–AR1581 (Comment 2.10.1).

[548] *Id.*, vol. 3, at p. 3-609, AR2194 (Response to Comment BN-123).

be considered significant in the absence of substantial evidence,"[549] that numerous public comments and alternative proposals were considered at every stage of the General Order's development;[550] that many comments, including these individual comments, did not provide substantial evidence concerning previously undisclosed significant impacts or substantially worse impacts than disclosed in the DEIR;[551] and that the comments did "not identify how the DEIR's findings that certain impacts are speculative would violate CEQA."[552] The Regional Board also pointed out that "CEQA does not require that a lead agency conduct every test or perform all research, study, and experimentation recommended or demanded by commenters."[553]

Master Response 2.10.2 further noted that, "based on the changes incorporated into the RAO 4.0 and the numerous Board workshops spent discussing the details of the Order requirements, the CCWB carefully considered the concerns of the regulated community, including those related to the costs of compliance."[554] However, a number of potential significant effects raised by commenters were deemed too speculative to factor into the Regional Board's environmental analysis. The Regional Board explained:

> [G]iven CEQA's prohibition on speculation, the DEIR provided a good faith effort to calculate the additional costs of the DAO 4.0 that could be reasonably estimated, and to disclose the economic effects and factors that could not be estimated or accurately quantified. Although it could not be predicted which management practices will be implemented by regulated individuals and entities, the approximate costs for the different types of reasonably foreseeable management practices were provided in Table 3.5-9 of the DEIR.[555]

In addition to the table of approximated costs, the DEIR also provided comparison information of estimated costs under the General Order versus the 2017 Agricultural Order, as well as "a literature review of the existing regulatory financial burden on

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[549] *Id.*, vol. 3, at p. 3-613, AR2918 (Response to Comment BN-146).

[550] *Id.*, vol. 3, at p. 3-609, AR2194 (Response to Comments BN-126); *id.* at pp. 3-611–3-612, AR2197–AR2198 (Response to BN-138).

[551] *Id.*, vol. 3, at pp. 3-609–3-613, AR2194–AR2198 (Responses to Comments BN-127–BN-143 and BN-145–BN-146).

[552] *Id.*, vol. 3, at pp. 3-611, AR2196 (Response to Comment BN-138).

[553] *Id.*, citing CEQA Guidelines, § 15024(a); *see* FEIR, at p. 3-613, AR2198 (Response to Comment BN-146). The Regional Board also addressed the commenter's claim that "the public provided ample information in the form of substantial evidence to make a 'fair argument' that the Project may have a significant environmental impact." In its responses, the Regional Board noted that the fair argument "applies only when a party is challenging the failure of a lead agency to undertake an EIR.".

[554] FEIR, vol. 3, at pp. 2-51, AR1581 (Master Response 2.10.2).

[555] *Id.*, vol. 3, at p. 2-54, AR1583 (Master Response 2.10.2).

growers in California" and "a discussion of cumulative impacts related to economics."[556] Agricultural petitioners downplay and largely disregard this extensive effort in the DEIR to in fact disclose the economic impacts on Dischargers.

The Regional Board further explained in its response to comments,

> The example economic analysis provided by commenters . . . which considers the economic impacts of complying with the nitrogen discharge limits on iceberg lettuce in Monterey County, is misleading in that it cherry-picks one element of Agricultural Order 4.0 (the lower nitrogen discharge limits that would go into effect in years after the Order adoption) to exaggerate economic impacts . . . [and appeared] to disregard potential ways that the growers could adapt their practices to reduce nitrogen discharges. [557]

As a result, the Regional Board concluded that commenters' analysis was "based on speculative assumptions regarding grower behavior" and that that the "'standard economic impacts analysis approach' referenced by the commenters would necessarily involve many more unreasonable over-simplifications and speculative assumptions…and thus would yield data of dubious quality."[558]

Thus, the FEIR does not improperly shift the burden of proof and the determination of significance to the public because, as required by CEQA, the Regional Board considered all substantial evidence in the record concerning significant impacts, including numerous oral and written comments provided during workshops and comment periods throughout the multi-year development process of the General Order. Although the FEIR did not reach conclusions of significant impact that agricultural petitioners believed should have resulted, the FEIR properly supported its conclusions with substantial evidence, even if some experts might disagree about the data sources and methodology employed in the analysis.[559]

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[556] *Id.*; *see* Draft General Waste Discharge Requirements for Discharges from Irrigated Lands (Agricultural Order), Draft Environmental Impact Report (DEIR), vol. 1, at pp. 3.5-33–3.5-34, Table 3.5-17, AR6583–AR6584 (cost comparisons); DEIR, at pp. 3.5-1–3.5-30, AR6551–AR6580 (literature review); and DEIR, at pp.5-7–5-10, Table 5-3, AR6763–AR6766 (discussion of cumulative impacts).

[557] FEIR, vol. 3, at p. 2-54, AR1583 (Master Response 2.10.2) (refencing Comment Letter BN, AR1982–AR2175, and Comments BN-368 to BN-415, AR2089–AR2102).

[558] *Id.*, vol. 3, at pp. 2-54–2-55, AR1583–AR1584.

[559] *Id.*, vol. 3, at p. 3-613, AR2198 (Response to Comment BN-146); *County of Inyo v. City of Los Angeles,* 71 Cal.App.3d at 189 (judicial review of an agency's decisions under CEQA should not focus upon an EIR's environmental conclusions, but only upon the EIR's sufficiency as an informative document); *Greenebaum v. City of Los Angeles*, 153 Cal.App.3d at pp. 401–02 ("A court may not set aside an agency's approval of an EIR on the grounds that an opposite conclusion would have equally or more reasonable"); *see also Laurel Heights I,* 47 Cal.3d. at pp. 392–93.

Additionally, the agricultural petitioner's contention here relies, in part, upon clear misapplication of the lone case cited in support, *Sundstrom v. County of Mendocino* (1988). *Sundstrom* concerned a challenge to a county's adoption of a negative declaration on the basis that the county's initial study was insufficient for determining whether a negative declaration or an EIR was most appropriate for the proposed project.[560] At the heart of the challenge was the assertion that the county's initial study "displayed only a token observance of regulatory requirements" in that it failed to note the source or content of data relied upon in the study, failed to record consultation with other agencies, failed to explain mitigation measures, and failed to describe the project or environmental setting.[561] The court there noted that "[t]he planning staff evidently did not ask the applicant to fill out the standard 'Environmental Information Form' [citation omitted] or seek any professional opinion on environmental impact other than that of the civil engineer designing the project."[562] After much discussion of the county's procedural failings in preparing and applying its initial study and the resultant lack of substantial evidence in the record, the *Sundstrom* court turned to the question of whether a trial court could nonetheless determine whether it could be "fairly argued" that the project might have a significant environmental impact, requiring preparation of an EIR.[563] This was the context in which the court opined:

> While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data. Thus, in *Christward Ministry v. Superior Court*, [ ] 184 Cal.App.3d 180, 197, the city adopted an initial study and negative declaration concluding in brief, conclusory language that the project would not have a significant environmental impact. Ordering the preparation of an EIR, the court commented, "the City's assertion it could find no 'fair argument' there would be any potentially significant environment impacts rests, in part, in its failure to undertake an adequate environmental analysis." CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the

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[560] *Sundstrom,* 202 Cal.3d at p. 305 ("Appellant here challenges the sufficiency of the County's initial study").

[561] *Id.*, at p. 305–06.

[562] *Id.*, at p. 306.

[563] *Id.*, at p. 309–315.

> record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.[564]

Thus, while that case does indeed state that, "The agency should not be allowed to hide behind its own failure to gather relevant data," and "CEQA places the burden of environmental investigation on government rather than the public," as stated in the GS Petition, those quotations are taken out of context. These considerations concern a lead agency's duties in preparing an initial study to determine whether additional environmental review is necessary and not, contrary to the agricultural petitioners' assertion, a lead agency's evaluation of significant impacts in an EIR. In fact, there was no EIR for the *Sundstrom* court to evaluate, much less opine upon. Moreover, unlike the county in *Sundstrom*, the Regional Board *did* prepare an EIR, which cites extensively to the evidence upon which its conclusions are based and provides explanations for why that evidence was used and why other evidence in the record was not.

As such, the Regional Board disagrees that it improperly shifted the burden of CEQA analysis to the public. The FEIR and supporting administrative record clearly show the extensive and proper public participation that went into every stage of the General Order's development. The conclusions reached in the FEIR are explained and supported by citations to substantial evidence in the record. The agricultural petitioners' disagreement with those conclusions has nothing to do with the propriety of the Regional Board's compliance with the CEQA process. This is evident in the agricultural petitioners' failure to provide law, facts, or explanation that actually support this contention. Instead, the agricultural petitioners rest this attack upon misstatements of law and the concept that the CEQA process should only have ended when the agricultural petitioners were satisfied with the results. Were CEQA to operate by this design, the EIR process could never end until every member of the public was satisfied with the results; after all, any time that a conclusion was disagreed with, it could be argued that the disagreeing party(s) unjustly bore the burden of proving those conclusions wrong. This is simply untenable and ignores the core tenets of CEQA – protecting the environment and informing the public.

C. Impacts to Agriculture and Forestry Resources (GS Petition, pp. 60-66)

The agricultural petitioners further argue that the FEIR's analysis of impacts to agriculture and forestry resources is improper and flawed. The agricultural petitioners make several important errors. Specifically, in recounting the failures of the FEIR, the petitioners list several purported impacts that the FEIR failed to analyze that are directly related to elements of the DAO that were removed in the RAO. For example, the agricultural petitioners state that the "FEIR… fails to address food safety, flood, [sic] insect vector control related to *setback requirements*; fails to address potential impacts to human health due to imposed *setbacks*…"[565] As described in the response to

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[564] *Id.*, at p. 311.

[565] GS Petition, at p. 62, (emphasis added).

Contention GS-12, subsection B, however, the riparian and operational setback requirements were removed in the RAO and are not included in the General Order. Thus, it is unclear why the FEIR should evaluate something that is no longer included as part of the Proposed Project.

Other statements in the GS Petition, although they do not specifically identify the "setback requirements," are dubious because they seem to ignore the fact that the operational and riparian setback requirements were removed. Perhaps the agricultural petitioners believe the FEIR should have continued to analyze the effects of the operational and riparian setback requirements even though they were removed from the RAO and PAO. For example, the agricultural petitioners state as follows:

> [T]he FEIR fails to account for loss of farmland attributable to food safety buffering and/or undercounts loss of farmland due to failure to account for loss attributable to food safety buffering; does not analyze conflicts with the California Leafy Greens Product Handling Marketing Agreement requirements . . . fails to properly analyze impacts to Williamson Act contracts and associated fees for cancellation of contracts when agricultural land in production is converted to open space as well as loss of County tax revenue if that land is permanently taken out of production due to impacts from the Project's requirements; fails to analyze decreases in overall land value and reductions of rental income due to loss of agricultural production area . . . [566]

Many of these concerns were raised before and during the DEIR review period when the operational and riparian setback requirements were included in the Conceptual Regulatory Requirement Options Tables and/or DAO; however, it seems that they've been carried over to the Petition for Review without consideration for how these purported impacts would be caused by the adopted General Order, which includes no operational and riparian setback requirements of any kind. The concern with respect to food safety buffering was primarily in connection to the operational and riparian setback requirements. The argument was generally made that due to the risk of harborage of wild animals that could act as vectors of disease, the food safety industry would respond to the DAO requirements by requiring new buffers next to riparian areas, and existing buffers would be increased in size and some crops may be prohibited next to riparian areas ("there will be 'buffers on buffers'"), all resulting in Dischargers losing incrementally more land upon which to plant crops.[567] Similarly, the concern with respect to the California Leafy Greens Product Handling Marketing Agreement requirements was primarily related to conflicts with respect to food safety requirements due to the operational and riparian setback requirements.

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[566] *Id.*

[567] *See* FEIR, vol. 3, at p. 3-1056, AR2641 (Comment DD-84).

In part due to the public concern regarding food safety, the EIR included analysis of potential risks to food safety from the Proposed Project and conflicts with the California Leafy Greens Product Handling Marketing Agreement, even developing a project-specific significance criterion under the evaluation of Hazards and Hazardous Materials.[568] This discussion was modified in the FEIR to indicate that, while implementation of riparian buffer areas as a management practice under the PAO remained possible, setback requirements were no longer included in the Proposed Project. Even with the setback requirements, however, the DEIR analysis found no evidentiary basis for the claim that food safety risks would be substantially increased due to the creation of additional riparian habitat,[569] or that food safety requirements would necessitate implementation of increased bare ground buffers and loss of production area. In short, it is unclear how the General Order would result in "loss of farmland attributable to food safety buffering," in particular with removal of the setback requirements, and the assertion that the FEIR "does not analyze conflicts with the California Leafy Greens Product Handling Marketing Agreement requirements" is simply false.

In a similar way, the agricultural petitioners do not explain how the General Order would impact "Williamson Act contracts and associated fees for cancellation of contracts when agricultural land in production is converted to open space as well as loss of County tax revenue if that land is permanently taken out of production due to impacts from the Project's requirements." Again, the DEIR analyzed impacts on Williamson Act contracts (Impact AG-2) at the time when the DAO included the setback requirements, finding that impacts would be significant and unavoidable.[570] With removal of the riparian and operational setback requirements, however, the impacts of the Proposed Project under Impact AG-2 were revised to less than significant due to the determination that the potential conversion of farmland from implementation of management practices and/or due to increased costs of compliance was speculative.[571] Given the lack of explanation and specific discussion in the GS Petition, it is difficult to determine whether the agricultural petitioners are simply unsatisfied with the EIR's analysis of the impacts they note, or whether they are under the mistaken impression that the General Order still has the setback requirements that were included in the DAO.

The ERA Economics Technical Memorandums cited to in the agricultural petition are discussed in further detail in the response to Contention GS-12, subsection E. In summary, as described in Master Response 2.10 in the FEIR,[572] the Monterey County

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[568] *See id.*, vol. 1, at pp. 3.8-27–3.8-29, AR0783-0785 (Impact HAZ-8).

[569] *Id.*

[570] *See* strikeout text in FEIR, vol. 1., at pp. 3.1-25–3.1-26, AR0625–AR0626 (Impact AG-2).

[571] FEIR, vol. 1, at p. 3.1-25, AR0625 (Impact AG-2).

[572] *See id.*, vol. 3, at pp. 2-51–2-55, AR1580–AR1584.

lettuce example described in the ERA Economics Technical Memorandum No. 2[573] is based on speculative assumptions regarding one aspect of the General Order (the lower nitrogen discharge limits that would go into effect in years after the Order adoption); therefore, the results of the study are not reliable and are an exaggeration of the potential economic costs and impacts associated with the General Order.

The EIR includes a good faith, reasonable, and adequate analysis of the potential impacts to agriculture and forestry resources. As noted by the agricultural petitioners, the EIR used the significance criteria for impacts to agriculture and forestry resources provided in Appendix G of the CEQA Guidelines. These significance criteria were entirely appropriate and properly focused the analysis on the *physical* effects to agriculture and forestry resources, rather than merely on economic and social impacts, which would not be in accordance with CEQA. The agricultural petitioners suggest that the EIR should have included a "thorough analysis of all potential impacts to agricultural lands, agricultural vitality, agricultural production, agricultural resources, related regional economic sectors including employment and wages, processing, shipping, and retail industries, and socioeconomic impacts to Central Coast communities…;"[574] however, many of these factors, in and of themselves, would not constitute significant effects on the physical environment.

It is discussed in detail in the Master Response 2.10 in the FEIR,[575] but it is worth repeating here, that the CEQA Guidelines specifically state that economic and social effects are significant only insofar as they would result in an adverse physical change in the environment. As stated in the CEQA Guidelines:

> Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the 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. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on

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[573] *See id.*, vol. 3, at pp. 3-504 –3-517, AR2089–AR2102 (Comments BN-368 to BN-415).

[574] GS Petition, at p. 65.

[575] *See* FEIR, vol. 3, at pp. 2-51–2-55, AR1580–AR1584.

> people, the overcrowding would be regarded as a significant effect.[576]

The CEQA Guidelines further state:

> Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.[577]

As such, even if an analysis were to find that the General Order could decrease agricultural vitality, agricultural production, or adversely affect employment and wages, processing, shipping, and retail industries, etc. (the Central Coast Water Board has serious doubts that it would), CEQA requires substantial evidence demonstrating that these potential impacts would be connected to changes to the physical environment. It is not enough to simply say that the General Order would result in increased costs of compliance or even that it may require some adjustment in farming practices, and that therefore this is a significant impact; rather, it would need to be established, again, by substantial evidence, that such increased costs or changes in practices would result in significant adverse physical changes in the environment. With respect to agricultural resources, the primary consideration under CEQA of whether any such adverse change in the physical environment would result, as identified in Appendix G of the CEQA Guidelines, has been conversion of Important Farmland to non-agricultural uses (as well as conflicts with existing zoning for agricultural use or Williamson Act contracts).

The agricultural petitioners do not describe, explain, or support how the General Order would result in impacts to agricultural land, agricultural vitality, agricultural production, agricultural resources, related regional economic sectors including employment and wages, processing, shipping, and retail industries, and socioeconomic impacts to Central Coast communities. They simply assert that the EIR includes allegedly "conclusory" statements regarding the speculative nature of impacts to agricultural lands resulting from implementation of management practices or increased costs of compliance.[578] The passages quoted in the agricultural petition from the FEIR are reasonable explanations for why it cannot be concluded that the General Order would result in significant impacts on agricultural resources (i.e., conversion of Important Farmland to non-agricultural uses or conflicts with existing zoning for agricultural use or Williamson Act contracts) due to implementation of certain management practices and/or increased costs compliance. In accordance with the CEQA Guidelines, the EIR evaluated potential effects until the point at which it was determined that a given effect was speculative: "If, after thorough investigation, a Lead Agency finds that a particular

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[576] CEQA Guidelines, § 15064(e).

[577] *Id.* § 15064(f)(6).

[578] *See* GS Petition, at p. 65.

impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact."[579]

As properly stated in the EIR, "Because Agricultural Order 4.0 would not specify the manner of compliance, it is not possible to determine which ranches will implement which management practices in which locations. As a result, it cannot be determined how many acres of land may be taken out of production due to implementation of management practices."[580] The Central Coast Water Board considered the different types of management practices that could be implemented under the General Order (refer to Table 2-9[581] and Table 3.5-9[582] of Volume 1 of the FEIR), some of which could result in conversion of relatively small patches of farmland to non-agricultural use; however, the flexible nature of the General Order means that individual Dischargers have discretion as far as which management practices to implement in order to comply with the General Order requirements. Presumably, most Dischargers would choose to implement management practices that do not reduce their productive acreage, if it is possible for them to do so. Additionally, for each type of pollutant or discharge, there are multiple different practices that are potentially available to reduce a given ranch's discharges, many of which would not affect the productive acreage.[583]

For all of these reasons, the Central Coast Water Board's determination that potential impacts to Important Farmland due to management practice implementation under the General Order are speculative is justified, and therefore less than significant. Again, the agricultural petitioners have not presented evidence to suggest that another conclusion is warranted.

The riparian and operational setback requirements that were included in the DAO were an example of a requirement where the Central Coast Water Board could determine with some degree of specificity how and where acres of Important Farmland could be converted to non-agricultural uses. For this reason, the DEIR included a quantitative analysis of the agricultural land conversion (and associated conflicts with existing Williamson Act contract lands) from the riparian and operational setback requirements. However, with the removal of the riparian and operational setback requirements in the RAO, this analysis was no longer applicable; thus, it was removed from the FEIR.

As has been discussed and will be further discussed in the response to Contention GS-12, subsection E, the potential for increased costs of compliance to result in

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[579] CEQA Guidelines, § 15145.

[580] *See* FEIR, vol 1., at pp. 3.1-24–3.1-25, AR0624–AR0625 (Impact AG-1).The GS Petition incorrectly cites the FEIR by including "(other than setbacks)" even though this parenthetical was struck out in the FEIR. Again, this calls into question whether the agricultural petitioners realize that the operational and riparian setback requirements were removed from the General Order.

[581] *See id.*, vol. 1, at pp. 2-39–2-41, AR0587–AR0589.

[582] *See id.*, vol. 1, at pp. 3.5-13–3.5-20, AR0709–AR0716.

[583] *See id.*, vol. 1, at pp. 2-39–2-41, Table 2-9, AR0587–AR0589.

conversion of Important Farmland to non-agricultural uses was properly determined to be speculative. What the agricultural petitioners allege as "conclusory" is merely a reasoned assessment of the facts, and a good faith explanation of the Central Coast Water Board's impact analysis process. For context and the benefit of additional explanation for the EIR's conclusions, the full paragraph partially quoted by the agricultural petitioners is provided below:[584]

> While Agricultural Order 4.0 would result in some increased costs, it is largely speculative as to whether these increased costs could lead to conversion of agricultural lands to non-agricultural uses. CCWB understands that profit margins may be slim for some business owners in the agricultural industry and any increased administrative/regulatory costs could adversely affect businesses' bottom lines. However, the potential effects of increased costs would depend on specific growers' situations as well as current and future agricultural commodity markets. CCWB does not find that the anticipated increased costs would be large enough to necessarily cause any existing agricultural operations to go out of business or otherwise choose to abandon their operations, and thereby potentially result in farmland being converted to non-agricultural uses. Please refer to Section 3.5 for more detailed discussion.[585]

For the reasons described in the EIR and in Master Response 2.10, the Central Coast Water Board maintains that it would be speculative to assume how individual Dischargers would choose to comply with the General Order requirements.[586] From there, it would take further speculation to determine (1) that such compliance actions and costs would affect the overall financial well-being of individual farms, (2) how this could affect employment figures, tax revenues, etc., and (3) this could result in physical changes to the environment.

In conclusion, the EIR's analysis of impacts to agriculture and forestry resources was proper and in accordance with the CEQA Guidelines. While the agricultural petitioners critique the analysis, they do not provide substantial evidence or specific explanation of how the General Order would necessarily lead to conversion of farmland to non-agricultural uses or other significant impacts to agricultural resources (apart from citations to past, outdated comment letters and the ERA Economics Monterey County lettuce example [discussed further in response to Contention GS-12, subsection E]). Further, the agricultural petition includes several false assertions (e.g., references to

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[584] GS Petition, at p. 65.

[585] FEIR, vol. 1, at p. 3.1-24, AR0624 (Impact AG-1).

[586] *See id.*, vol. 3, at pp. 2-51–2-55, AR1580–AR1584.

"setback requirements," which have been removed from the General Order), which call into question the agricultural petitioners' understanding of the facts.

D. Economic Analysis (GS Petition, pp. 67-72)

In response to the agricultural petitioners' argument that the economic analysis in the FEIR is improper and flawed, it should first be noted that an analysis of economic effects is not specifically required under CEQA. As has been discussed, Appendix G of the CEQA Guidelines does not include any questions specifically related to economics;[587] rather, the resource topics included in Appendix G and normally included in an EIR are as follows: Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation and Traffic, Tribal Cultural Resources, Utilities and Service Systems, and Wildfire.[588] As required under CEQA, all of these resource topics address and are limited to aspects of the physical environment:

> "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.[589]

As discussed in the response to Contention GS-12, subsection B, the Central Coast Water Board included an analysis of economics in the EIR due to public concern and the potential for effects associated with the Proposed Project. However, the Central Coast Water Board appropriately limited the scope and focus of the analysis to the potential impacts to the physical environment that could arise from implementation of the Proposed Project.

Given this background on the requirements in the CEQA Guidelines with respect to economic and social changes (as well as the prohibition on speculation; refer to response to Contention GS-12, subsection D, and CEQA Guidelines Section 15145), it is clear that much of what the agricultural petitioners is arguing is inapplicable. Essentially, the agricultural petitioners are upset that the Central Coast Water Board did not conduct an exhaustive and speculative analysis of purely economic effects that are irrelevant under CEQA. The agricultural petitioners fail to acknowledge that alleged

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[587] CEQA Guidelines, Appendix G.

[588] *Id.*

[589] CEQA Guidelines, § 15382.

impacts such as “potential economic impacts to growers, linked industries (processing, shipping, etc.), communities, and the region as a whole[,]”[590] “job losses, impacting communities with higher levels of unemployment and lower tax revenues[,]”[591] “direct, indirect, and induced socioeconomic impacts to producers and ancillary businesses in the Central Coast”[592] are significant under CEQA only so far as they can be shown with substantial evidence to result in significant adverse changes in the physical environment.

Another fundamental tenet of CEQA that is relevant to consideration of the agricultural petitioners’ claims is that of baseline. The concept of baseline is integral to conducting CEQA analyses, as it establishes the standard by which changes brought about by a project are compared. As described in the CEQA Guidelines:

> An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant… Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.[593]

With respect to the economics analysis in the EIR, although economics generally do not constitute physical environmental conditions, it is entirely appropriate to discuss the existing costs of compliance with the 2017 Agricultural Order. At the time that the NOP was published for the Proposed Project and when the EIR analysis was being conducted, the 2017 Agricultural Order was in effect and Dischargers were incurring costs associated with compliance with that order. Therefore, the costs of compliance with the 2017 Agricultural Order represented part of the existing conditions against which any additional costs of the General Order could be compared. Contrary to what is stated by the agricultural petitioners, the economics section of the EIR includes discussion of total regulatory costs for Dischargers; the different types of environmental regulatory costs by crop type; estimated regulatory cost by farm income, and how regulatory costs relate to the costs of production.[594] The discussion of the costs of compliance with the 2017 Agricultural Order includes information on the costs of typical

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[590] GS Petition, at p. 69.

[591] *Id.*, at p. 70.

[592] *Id.*, at p. 71.

[593] *See* CEQA Guidelines, § 15125.

[594] *See* FEIR, vol. 1, at pp. 3.5-8–3.5-12, AR0704–AR0708.

management practices (refer to Table 3.5-9[595] in the FEIR, Volume 1), permit fees,[596] monitoring and reporting costs,[597] and the costs of administering the 2017 Agricultural Order.[598]

The agricultural petitioners do not explain the reasoning behind their statement that "Additionally, previously considered costs from prior regulations (Ag Order 3.0) are not directly relevant to an assessment of the economic impact of the Project since the Project includes substantial new requirements not imposed under Ag Order 3.0."[599] The General Order does include new requirements relative to the 2017 Agricultural Order, such as the requirement for an INMP summary report, which is why those new/additional costs are disclosed in Table 3.5-17 of the EIR.[600] As discussed above, the Central Coast Water Board believes that the costs of compliance with the 2017 Agricultural Order are relevant because they provide a reference point and represent the existing baseline conditions in accordance with the spirit of CEQA.

As described in the General Order Attachment A, the cost analysis:

> estimated costs associated with implementing Ag Order 3.0 versus implementing Ag Order 4.0 over five-year project periods. For Ag Order 3.0, the hypothetical project period was assumed to be 2017-2021 since Ag Order 3.0 was adopted in 2017. For Ag Order 4.0, a project period of 2021-2025 was used, since the Central Coast Water Board anticipated the Order would be adopted in late 2020 or early 2021. The five-year project periods are necessary to account for one-time costs and the phasing and prioritization approach taken under Ag Order 4.0 . . . .[601]

In other words, it was entirely reasonable to estimate and compare costs of the General Order to the 2017 Agricultural Order over a five-year period. The agricultural petitioners state that "limiting the analysis to only five years (years 2021-2025) grossly underestimates costs given the nature of the Project, a long-term general waste discharge requirements order."[602] However, they do not indicate what an appropriate length of time would be for an estimate of costs, or how using a longer time frame would

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[595] *Id.*, at pp. 3.5-13–3.5-19, AR 0709–AR0715.

[596] *Id.*, at pp. 3.5-21, AR 0717.

[597] *Id.*, at pp. 3.5-21–3.5-30, AR 0717–AR0726.

[598] *Id.*, at p. 3.5-30, AR 0726.

[599] GS Petition, at p. 68.

[600] *See* FEIR, vol. 1, at pp. 3.5-37–3.5-39, AR0733–AR0735.

[601] *See* General Order, Attachment A, at p. 28, paragraph 94, AR0111.

[602] GS Petition, p. at 69.

change the impact conclusions under CEQA. Of course it is true that the five-year period does not capture the costs for the full lifetime of the General Order, but it provides an indication of the costs of complying with the General Order at the outset (where costs would be higher) and the relative annual cost subsequent to the initial start-up period.

The agricultural petitioners further argue that the discussion of "total costs" in the General Order, Attachment A and the FEIR is misleading in that it only considers direct costs associated with fees, assessments, and paperwork.[603] The agricultural petitioners state: "The 'total costs' do not include the economic impacts of surface water limits, nitrogen discharge limits, riparian setbacks, or cumulative costs, and therefore, are *not* total costs."[604] Again, the inclusion of "riparian setbacks" in this statement makes one question whether the agricultural petitioners realize that the riparian and operational setback requirements were removed from the General Order, or whether they have simply cut-and-pasted their previous complaints regarding the DAO and DEIR (when the setback requirements were included). Notwithstanding this mistake, it is also unclear what the economic impacts of "surface water limits" and "nitrogen discharge limits" would be or how one would calculate such impacts. As has been discussed, the General Order does not mandate a specific manner of compliance and there are multiple ways in which an individual Discharger could reduce their discharges of pollutants (refer to Table 2-9 in the EIR)[605] to meet applicable limits, many of which would have different costs and may or may not be appropriate for individual ranches.

Much of the agricultural petitioners' complaints in this contention come down to the question of what the Central Coast Water Board should have evaluated in its economic analysis. They state that "[a]lthough the FEIR includes estimates of some costs, mostly in the form of direct costs of fees, assessments, and paperwork, most costs to agriculture were not analyzed or were analyzed improperly."[606] They then list the various aspects of the General Order compliance that the FEIR allegedly failed to quantify or estimate:

> The FEIR failed to analyze the economic impacts on jobs, land use, and agricultural resources resulting from the Project's requirements; failed to quantify, discuss, or analyze various regulatory components, such as nitrogen discharge limits, that may make current rotation systems economically or agronomically infeasible, which would result in substantial economic impacts (e.g., precipitous drop in land values and property taxes, and lease rates); failed to analyze changing management practices, inputs, rotations, and land uses to

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[603] *Id.*

[604] *Id.*

[605] *See* FEIR, vol. 1, at pp. 2-39–2-41 AR0587–AR0589.

[606] GS Petition, at p. 69.

> comply with discharge targets/limits; failed to analyze the ability to meet surface water discharge limits using currently available pesticide chemistries; failed to adequately analyze land use changes / taking land out of production to comply with the prohibition on riparian disturbance; and opportunity cost of management time for compliance paperwork, training, and other administration.[607]

Nearly all of these items involve some degree of speculation regarding how individual Dischargers would choose to comply with the requirements of the General Order. The Central Coast Water Board believes that it has acted in accordance with CEQA by estimating the costs associated with the General Order compliance that can be estimated (by nature, these primarily relate to direct costs associated with monitoring and reporting requirements) and not speculating with regards to costs that cannot be estimated.

The ERA Economics study of lettuce production in Monterey County, cited to in the agricultural petition, demonstrates the inherent challenges of trying to quantify the economic impacts of aspects/outcomes of the DAO/General Order that are fundamentally speculative in nature.[608] As described in the study, the analysis required numerous simplifications and assumptions. First, the authors note: "We . . . have applied a simplified agronomic relationship between yield and applied nitrogen based on published research that would benefit from future refinements."[609] Presumably, the authors are referring here to the Hoque et al. (2010) study (Hoque study) referenced later in their discussion, which apparently formed the entire basis for their analysis. The Hoque study "used field-controlled trials to evaluate the effect of varying N, P, and K application rates on romaine and iceberg lettuce yields" and "estimate[s] a lettuce yield-nitrogen relationship (or yield function)."[610] The Central Coast Water Board did and will not comment on the specific, technical details of this study, other than to say that it is questionable to rely on the results of one peer-reviewed study for the economic impacts analysis. The Hoque study authors themselves acknowledge the varied results in their field of study: "Although some studies indicate that adequate lettuce yield can be achieved with low N application rates (Soundy and Smith, 1992), others suggest that high rates of N might be required to achieve maximum yields (Carling et al., 1987)."[611] In their concluding remarks, the Hoque study authors summarize the implications of

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[607] *Id.*, at p. 69–70.

[608] *See* FEIR, vol. 3, at pp. 3-504–3-517, AR 2089–AR2102. The ERA Economics study (Technical Memorandum No. 2) was prepared during the DEIR review period and thus was based off of the requirements in the DAO; however, the nitrogen discharge targets and limits, which are the chief focus of the study, remain relatively unchanged in the General Order compared to the DAO.

[609] *Id.*, vol. 3, at pp. 3-504–3-505, AR 2089–AR2090 (Comment BN-369).

[610] *Id.*, vol. 3, at pp. 3-507–3-508, AR2092–AR2093 (Comment BN-383).

[611] Hoque, M., et al. 2010. Yield and Postharvest Quality of Lettuce in Response to Nitrogen, Phosphorous, and Potassium Fertilizers. HortScience. 45(10): 1539, AR35573.

their findings: “Application of moderate rates of N and P increased romaine and iceberg lettuce yield and enhanced postharvest quality. Application of N, P, and K is recommended in soils that are deficient in these nutrients.”[612]

The ERA Economics study then assumes that Dischargers would respond to nitrogen discharge limits in the General Order by simply reducing nitrogen applied: “Given that the nitrogen in irrigation water and the percent proportion of nitrogen in the harvested crop are beyond control of the grower, the primary response available to the grower is to reduce applied nitrogen to meet discharge limits in the Order.”[613] However, this ignores the numerous other potential responses or management practices that a Discharger could employ to meet nitrogen discharge targets and limits, most notably increasing nitrogen removed (R). In the General Order, under both Compliance Pathways 1 and 3, there is potential to increase R to reduce one’s overall nitrogen discharge.[614] As described in the General Order, R is the amount of nitrogen removed from the field through harvest, sequestration, or other removal methods, in pounds per acre, and comprises the following:

- **R_{HARV}** is the amount of nitrogen removed from the field through harvest or other removal of crop material.
- **R_{SEQ}** is the amount of nitrogen removed from the field through sequestration in woody materials of permanent or semi-permanent crops.
- **$R_{SCAVENGE}$** is the amount of nitrogen credited as removed from the field through nitrogen scavenging cover crops utilized during the wet/rainy season, nitrogen scavenging high carbon amendments during the wet/rainy season, or high carbon woody materials applied as mulch to the crop ground surface.
- **R_{TREAT}** is the amount of nitrogen removed from the ranch through a quantifiable treatment method (e.g., bioreactor).
- **R_{OTHER}** is the amount of nitrogen removed from the ranch through other methods not previously quantified.[615]

Tables 2-8[616] and 2-9[617] in the EIR further provide numerous potential management practices that can be used to reduce nitrogen discharge and/or increased nitrogen removed prior to discharge, including the following:

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[612] *Id.*, at pp. 1543–1544, AR35577–AR35578.

[613] FEIR, vol. 3, at p. 3-508, AR2093 (Comment BN-383).

[614] Since the ERA Economics study was submitted, an additional compliance pathway (Compliance Pathway 3), as well as a nitrogen scavenging credit, were added to the General Order; nevertheless, increasing nitrogen removed was still an option under Compliance Pathway 1 under the DAO when the study was prepared.

[615] *See* General Order, at pp. 24–25, AR0027–AR0028.

[616] *See* FEIR, vol. 1, at 2-29, AR0577.

[617] *See id.*, vol. 1, at 2-39–2-41, AR0587–AR0589.

- Evaluate how much fertilizer crop needs and timing of application.
- Schedule fertilizer applications to match crop requirements.
- Measure nitrogen concentration in irrigation water and adjusted fertilizer nitrogen applications accordingly.
- Measure soil nitrate or soil solution nitrate and adjusted fertilizer nitrogen applications accordingly.
- Use precision techniques to place fertilizer in the root zone, to ensure crop uptake, with minimal runoff and deep percolation (e.g., fertigation).
- Measure nitrogen in plant tissue and adjusted fertilizer nitrogen applications.
- Measure nitrogen and phosphorous content of applied manures and other organic amendments.
- Use urease inhibitors and/or nitrification inhibitors.
- Modify crop rotation to use beneficial cover crops, deep rooted species, or perennials to utilize nitrogen.
- Use treatment systems to remove nitrogen from irrigation runoff or drainage water (e.g., wood and chip bioreactor).
- Plant cover crops; use them and manage them appropriately (e.g., not applying fertilizer to them)
- Install buffer strip, vegetated filter strip, or swale
- Install constructed wetlands or other vegetated treatment system
- Install bioreactors
- Develop a nutrient management plan:
    - Apply nutrients at rates necessary to achieve realistic crop yields
    - Improve timing of nutrient application
    - Use agronomic crop production technology to increase nutrient use efficiency

- Avoid winter nitrogen applications
- Managed leaching (leach when nitrate content is low and electrical conductivity is high; do no leach during crop cycle)
- Plan timing of fertilizer application to avoid applying before predicted rainfall events
- Monitor the nutrient content of the soil to reduce fertilizer applications
- Account for nutrient content of unharvested plant material to reduce fertilizer applications
- Increase the amount of plant material removed from the field
- Manage soil health to improve water and nutrient retention and reduce leaching

While some of these bullet points are admittedly duplicative, it is clear that the ERA Economics study disregarded numerous potential practices that a Discharger could take to reduce their nitrogen discharge. Other assumptions the ERA Economics lettuce example made include:

- "Nitrogen in applied irrigation water is accounted for using the default UCCE [University of California Cooperative Extension] applied water requirements for iceberg lettuce of 12 inches (January – April season), and assuming an aggregate level of 10 mg/L of nitrogen in the groundwater."[618]
- "The analysis assumed an application of compost at the rate of 2 tons of compost per crop and assumes a (conservative) 1% nitrogen content of the compost."[619]
- "A baseline nitrogen fertilizer application rate of 209 lbs/N/ac/crop is applied in our analysis."[620]
- "An example two-crop rotation (two iceberg lettuce crops per year) is used, with total nitrogen discharge calculated as double the single crop

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[618] *Id.*, vol. 3, at p. 3-508, AR2093 (Comment BN-383).

[619] *Id.*

[620] *Id.*, vol. 3, at p. 3-509, AR2094 (Comment BN-383).

value. In practice, standard rotation systems vary across the Central Coast regions and this should be refined in future work."[621]

- "A 12-month average price of $13.80 per 42-lb carton is applied, average annual yield is 900 cartons/ac using the UCCE production budget."[622]

The Central Coast Water Board does not fault the ERA Economics analysis authors for making assumptions and simplifications to attempt to quantify economic impacts, but a study resting on so many assumptions that may or may not apply to the many unique circumstances of individual ranches in the Central Coast Region will necessarily produce questionable results. Of all the assumptions, the assumption that Dischargers have only one response available to reduce nitrogen discharges is the most unrealistic. As discussed above, this ignores the diversity of available options and denies the creativity of Dischargers in developing effective solutions going forward. Frankly, it is speculation and negates the findings of the study with respect to economic costs and impacts.

Finally, it should be noted that the ERA Economics lettuce example focuses on one aspect of the General Order that is controversial and that the Central Coast Water Board has acknowledged will be difficult for many Dischargers to achieve based on current technology and may require reassessment in the future. As discussed in Master Response 2.10 in the FEIR, the Central Coast Water Board acknowledges that the nitrogen discharge limits below 300 pounds/acre/year will be difficult to achieve for many Dischargers using current technology and farming techniques, particularly in situations where multiple crops are rotated on a given field during the course of a year.[623] As discussed throughout responses to agricultural petitioners' contentions, to reduce potential hardships and provide greater flexibility for Dischargers, the Central Coast Water Board incorporated into the General Order a third-party alternative compliance pathway for groundwater protection.[624] Participating Dischargers in the third-party alternative compliance pathway for groundwater protection are afforded several benefits with respect to the individual compliance pathways, as follows. Participating Dischargers:

a. Are not subject to fertilizer nitrogen limits in Table C.1-2, which are enforceable by the Central Coast Water Board.

b. Are not subject to nitrogen discharge limits in Table C.1-3, which are enforceable by the Central Coast Water Board.

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[621] *Id.*

[622] *Id.*, vol. 3, at p. 3-510, AR2095 (Comment BN-392).

[623] *See id.*, vol. 3, at p. 2-54, AR1583.

[624] *See* General Order, pt. 2, § C.2, at p. 31, AR0034.

c. Are subject to targets, which if exceeded result in consequences outlined in this Part 2, Section C.2.

d. Are not subject to ranch-level groundwater discharge monitoring and reporting.

e. Are generally provided more time to achieve fertilizer nitrogen application targets and nitrogen discharge targets, relative to non-participating dischargers. [625]

Additionally, stipulations are added into Part 2, Sections C.1 and C.2 of the General Order that applicable nitrogen discharge targets or limits will be re-evaluated before becoming effective. Specifically, Part 2, Section C.1 states: "The initial 2027 nitrogen discharge limits, as shown in Table C.1-3 will be re-evaluated based on Discharger reported nitrogen applied and removed data, new science, management practice implementation and assessment before becoming effective."[626] Similarly, Part 2, Section C.2 states: "The final year 2028 nitrogen discharge targets, as shown in Table C.2-2 will be re-evaluated based on Discharger reported nitrogen applied and removed data, new science, management practice effectiveness assessment and evaluation, and groundwater protection area collective numeric interim and final targets before becoming effective."[627] As such, with respect to the aspect of the General Order which allegedly would have substantial economic impacts (e.g., "substantial land fallowing, land conversion, and other socioeconomic impacts in the Central Coast regions"), the Central Coast Water Board has incorporated important alternative compliance options, flexibility, and stipulations for future re-evaluation which will serve to limit potential impacts.[628]

With respect to the ERA Economics Memorandum No. 1, much of the contents of this memorandum have been directly quoted elsewhere in the GS petition and in the main body of the Agricultural Association Partners DEIR comment letter; thus, the primary arguments and statements in the memorandum are already largely addressed in other responses above and in the FEIR.[629] However, the contents of the memorandum are further discussed here. First, like the agricultural petitioners, ERA Economics' primary argument is that the Central Coast Water Board should have evaluated additional economic factors and responses: "The DEIR 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 DEIR does not

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[625] *Id.*

[626] *Id.*, at p. 29, paragraph 25, AR0032.

[627] *Id.*, at p. 33, paragraph 10, AR0036.

[628] FEIR, vol. 3, at p. 3-516, AR2102 (Comment BN-415).

[629] *See id.*, vol. 3, at pp. 3-425–3-472, AR2010–AR2057 (Comments BN-83 to BN-248).

prepare any economic analysis."[630] The vast majority of the additional individual comments in the memorandum rest on this notion that the Central Coast Water Board did not evaluate these factors that can be "reasonably quantified," and therefore, the EIR is deficient.

As has been discussed, the Central Coast Water Board considers factors such as the Discharger response to the General Order, particularly when no specific management practices or compliance approaches are mandated (and many options are available to Dischargers), as fundamentally speculative. While ERA Economics asserts that "there is a well-established literature/method for assessing the effect of regulatory costs and other policy changes on producers and related businesses," they all but acknowledge that the DAO would not mandate a specific manner of compliance.[631] The only element of the DAO that ERA Economics could identify that might arguably require a specific practice or action by Dischargers was the riparian and operational setback requirements, which have since been removed from the General Order: "Further, the inclusion of mandatory operational and/or riparian setbacks are *arguably* requirements that mandate a specific management action."[632]

The ERA Economics authors disagree with the way in which certain studies (e.g., McCullough et al. 2017, Hurley and Noel 2006, Paggi et al. 2009) are described and summarized in the EIR; however, they do not indicate how providing additional context or information from the studies would have changed the significance conclusion in the EIR's impact analysis. The chief complaints appear to be that the data used in the studies were obtained prior to the studies' publication dates, and that accounting measures of regulatory costs are inappropriate because they do not estimate the economic effect (how the industry would be likely to respond) of increasing regulatory costs on the Central Coast industries.[633]

The ERA Economics authors also decry the EIR's use of "old" data in the environmental setting[634] and the EIR's presentation of an example budget for a single crop (romaine hearts) in Table 3.5-3.[635] As described in the Response to Comment BN-111, the Central Coast Water Board used the data that were available in developing the environmental setting for Section 3.5, "Economics" of the EIR. With respect to the data in Table 3.5-1, no more recent report showing the breakdown of agricultural economic

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[630] *Id.*, vol. 3, at p. 3-485, AR2070, (Comment BN-289).

[631] *Id.*, vol. 3, at p. 3-485, AR2070 (Comment BN-291). Again, the ERA Economics memorandums were submitted during the DEIR/DAO review period, so their comments were specifically directed at the DEIR/DAO.

[632] *Id.*, vol. 3, at p. 3-485, AR2070 (Comment BN-291) (emphasis added).

[633] *Id.*, vol. 3, at pp. 3-487, 3-494–3-495, AR2072, AR2079–AR2080 (Comments BN-298 and BN-336 to BN-341).

[634] *Id.*, vol. 3, at p. 3-493, AR2078 (Comments BN-330 to BN-331).

[635] *Id.*, vol. 3, at pp. 3-493–4-494, AR2078–AR2079 (Comments BN-332 to BN-337).

information specific to the central coast region could be found during preparation of the EIR.[636] The information from the study by UCCE – Agricultural Issues Center on the costs of production for Dischargers of romaine hearts in the central coast region was included in the EIR to provide the reader (assumed to potentially be a lay person without detailed knowledge of agricultural economics) a sense of the costs of production for an example crop.[637] The EIR acknowledged that a single crop is not necessarily representative of all crops or the region as a whole, and compared the results of the romaine hearts study to a similar study done for strawberries.[638]

The Comments BN-342 to BN-350[639] reiterate the ERA Economics authors' over-arching argument that the EIR analysis should have considered additional factors and included additional analysis, in particular, connecting the costs associated with the DAO to decisions by central coast producers through a standard economic analysis framework.[640] Again, as has been discussed, the Central Coast Water Board believes that attempting to predict decisions by central coast producers made in response to General Order requirements would be a speculative and fruitless exercise. With respect to ERA Economics' discussion on economic analyses undertaken by the Central Valley Water Board and others, as well as ERA Economics' recommended analysis approach, the Central Coast Water Board acknowledges these comments; however, the Central Coast Water Board is under no obligation to replicate economic analyses undertaken by other agencies for other projects.[641] From the description of ERA Economics' recommended approach, it is clear that such an approach would be extremely burdensome and would require numerous speculative assumptions regarding Discharger behavior and management practice implementation.[642] Thus, it would not provide useful results.

In conclusion, the economic analysis conducted by the Central Coast Water Board for the Proposed Project was adequate and consistent with CEQA. An economic analysis, per se, was not required under CEQA, but the Central Coast Water Board chose to undertake the analysis out of good faith and respecting public concern. The agricultural petitioners have not provided any substantial evidence to discredit the FEIR's conclusion and support their claims that the General Order would result in economic impacts sufficient to lead to significant adverse effects on the on the physical environment.

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[636] *See id.*, vol. 1, at pp. 3.5-2–3.5-3, AR0698-AR0699.

[637] *See id.*, vol. 1, at pp. 3.5-4–3.5-8, Tables 3.5-3 and 3.5-4, AR0700–AR0704.

[638] *Id.*, vol. 1, at p. 3.5-8, AR0704.

[639] *See id.*, vol. 3, at pp. 3-495–3-497, AR2080–AR2082.

[640] *Id.*, vol. 3, at p. 3-496, AR2081 (Comment BN-344).

[641] *See id.*, vol. 3, at pp. 3-497–3-501, AR2082-2086 (Comments BN-351 to BN-361).

[642] *See id.*, vol. 3, at pp. 3-500–3-501, AR2086 (Comment BN-361).

Contention GS-13: The FEIR fails to identify and discuss the project's inconsistency with relevant local plans. (GS Petition, pp. 72-73)

Response GS-13: The CEQA Guidelines require an EIR to discuss any inconsistencies between the proposed project and *applicable* general plans, specific plans, and regional plans.[643] Conversely, an EIR need not provide analysis where a project is consistent with relevant plans.[644] Further, there is no requirement that an EIR explain why the project is consistent with applicable plans or to provide support for a conclusion that there are no plan inconsistencies.[645] The CEQA Guidelines do not specify a location in the EIR for the plan inconsistency analysis.[646] Such analysis may appear in the discussion of environmental setting, discussion of specific categories of environmental impacts, a separate chapter dedicated to plan consistency, or a combination of locations.

The CEQA Guidelines do not contain any standards for determining whether a project is inconsistent with an applicable plan. Courts will defer to an agency's decision on consistency with its own plan(s) unless, on the basis of evidence before the decision-making body, a "reasonable person" could not have found the project to be consistent.[647] When a question arises about consistency with a plan adopted by an agency other than the lead agency, it is left up to the lead agency to resolve the issue, and its determination will be upheld if it is supported by substantial evidence.[648]

Strict conformity with all aspects of general plans is not required; a proposed project should be considered to be consistent with local general plans if it furthers one or more policies and does not obstruct other policies.[649] Generally, given that land use plans reflect a range of competing interests, a project should be compatible with the plan's overall goals and objectives but need not be in perfect conformity with every plan policy.[650] In most cases, general plan goals, objectives, and implementation measures are designed to provide policy guidance rather than to specify regulatory requirements

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[643] CEQA Guidelines, § 15125(d).

[644] *See The Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.5th 883, 894.

[645] *North Coast Rivers Alliance*, 216 Cal.4th at p. 632.

[646] CEQA Guidelines, § 15125(b).

[647] *See The Highway 68 Coalition v. County of Monterey*, 14 Cal.5th at p. 896.

[648] *North Coast Rivers Alliance*, 216 Cal.4th at p. 632.

[649] 67 Ops Cal Atty Gen 75 (1984); Office of Planning and Research (OPR), State of California General Plan Guidelines (2003).

[650] *See*, *e.g., Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.4th 807, 815 (upholding overall consistency finding even though project deviated from some plan provisions because plan allowed for balancing of competing policies).

or prohibitions.[651] Agencies have particularly broad discretion in determining a project's consistency with such policies.[652]

With respect to the agricultural petitioners' contention, it should first be noted that general plans and other local plans and policies are applicable to the Proposed Project only insofar as they may apply to the actions of private landowners within the boundaries governed by those local plans and policies that may be taken in response to the General Order. As described in Response to Comment BN-212 of the FEIR, "local plans do not supersede, control, or limit the scope of the CCWB's authority under the Porter-Cologne Act and other water quality laws and regulations."[653] Additionally, there are several factors with respect to the nature of the Proposed Project that made a detailed analysis of consistency with local plans impracticable and speculative. First, the Proposed Project is a General Order covering the entire central coast region, which includes all or parts of nine counties (i.e., Kern, Monterey, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, and Ventura), as well as an untold number of cities and towns. In other words, the Proposed Project covers an extremely large area, where numerous potential local plans may apply to the actions of private landowners subject to the requirements of the Proposed Project, but not to the Central Coast Water Board's authority to adopt a General Order or to enforce compliance with it.

Further, by its nature, being waste discharge requirements for water quality protection, the Proposed Project does not mandate a specific manner of compliance such that, as has been stated before, it cannot be determined where (e.g., in which county or city jurisdiction) a given management practice may be installed or implemented by which Dischargers. From Tables 2-5 through 2-8 and Table 2-9 of Volume 1 of the FEIR, it can be seen that the reasonably foreseeable management practices would not include habitable structures, housing or commercial developments, parking lots, or any other such development.[654] Rather, the potential management practices (e.g., cover crops, buffer strips and/or vegetated filter strips, nitrogen bioreactors, sediment basins, etc.) would be water quality measures that would be limited in physical scale and that would be consistent with irrigated agriculture. As such, unlike a defined development project with a specific footprint and location, and where an analysis of consistency with general plan policies can be straightforwardly performed, a detailed analysis of consistency with general plan policies for the Proposed Project would necessarily be more nebulous and involve forecasting about the types of activities that could occur under the General Order and where they would occur.

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[651] *Napa Citizens,* 91 Cal.4th at p. 378.

[652] *See, e.g., Naraghi Lakes Neighborhood Preservation Ass'n v. City of Modesto* (2016) 1 Cal.5th 9, 21.

[653] FEIR, vol. 3, at p. 3-627, AR2212.

[654] *Id.*, vol. 1, at pp. 2-29–2-35, AR0577-AR0583; *id.,* at pp. 2-39–2-41, AR0587–AR0589.

Even given these challenges and limitations, the Regional Board did consider the potential for conflicts with local land use laws and zoning in several places in the EIR.[655] First, the Regional Board properly considered and dismissed the land use and planning resource topic from detailed analysis in the EIR. As described in the FEIR:

> Compliance with Agricultural Order 4.0 would not require construction of any structures or infrastructure that could physically divide an established community. In general, reasonably foreseeable methods of compliance/management practices would be limited to on-farm measures designed to minimize or eliminate discharges of pollutants to receiving waters. These practices would be implemented for the purpose of minimizing environmental effects of irrigated agriculture (i.e., adverse impacts to water quality). While some adverse effects could occur during construction/installation of management practices, they would not be anticipated to conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.[656]

Additionally, as the agricultural petitioners recognize, the EIR included a generalized discussion of general plans and general plan goals and policies related to agriculture and forestry resources in the Agriculture and Forestry Resources section.[657] Appendix B provided the specific general plan goals and policies related to agriculture and forestry resources (and all other resource topics considered in detail in the EIR) that were determined to be relevant to the Proposed Project and the environmental analysis under CEQA.[658] Further, in the analysis under Impact AG-2 in Section 3.1, "Agriculture and Forestry Resources," the Regional Board analyzed the potential for the Proposed Project to conflict with existing zoning for agricultural use, in accordance with the significance criteria in CEQA Guidelines Appendix G.[659] The Agricultural Petitioners' quotation with respect to this analysis[660] is misleading in that it ignores the strikeout text from the DEIR. At the time when the DAO included the riparian and operational setback requirements, the DEIR analysis conservatively found that the Proposed Project (DAO) would conflict with existing zoning for agricultural use due to the conversion of

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[655] The second criterion in Appendix G of the CEQA Guidelines under the Land Use and Planning topic is: "Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?"

[656] FEIR, vol. 1, at p. 3.0-4, AR0598.

[657] *Id.*, vol. 1, at p. 3.1-2, AR0602.

[658] *See id.*, vol. 2, at pp. B-1–B-22, AR1440–AR1461.

[659] *See id.*, vol. 1, at pp. 3.1-25–3.1-26, AR0625–AR0626.

[660] GS Petition, at p. 72.

agricultural land to non-agricultural use from implementation of the setback requirements. As described in the DEIR and strikeout text in the FEIR:

> Much of the land that could be taken out of production as a result of Agricultural Order 4.0 is zoned for agricultural use by the applicable county government and/or under a Williamson Act contract. Although zoning regulations vary by jurisdiction, in general, agricultural zoning districts encourage conservation of agricultural lands and continuation of agricultural uses. Riparian vegetation/habitat is not a use that would typically be specifically prohibited in an agricultural zoning district, but it also would not further the purpose of the district by conserving agricultural lands. Given that Agricultural Order 4.0 could result in the conversion of as much as 4,064 acres of agricultural land (see Table 3.1-3), most of which would be zoned for agricultural use, to riparian uses, this conversion would conflict with the existing zoning for agricultural use.[661]

Impact AG-2 also included analysis of potential conflicts with Williamson Act contracts, which were found to be significant, again due to the riparian and operational setback requirements. Altogether, at the DEIR stage, the Regional Board found that impacts related to conflicts with existing zoning for agricultural use and Williamson Act contracts would be significant and unavoidable, since no feasible mitigation was available to reduce the significant impacts (strictly associated with conversion of agricultural land to non-agricultural use caused by the riparian and operational setback requirements) to a level that was less than significant.[662]

However, with removal of the riparian and operational requirements in the RAO and PAO, the Regional Board revised the conclusion under Impact AG-2 to less than significant and struck the text related to conflicts with existing zoning for agricultural use and Williamson Act contracts due to the setback requirements from the FEIR. As discussed above and in Impact AG-1 of the FEIR, the Regional Board maintains its position that potential conversion of agricultural land to non-agricultural uses due to increased costs of compliance or from implementation of certain management practices is speculative.[663] The Agricultural Petitioners again misleadingly quote the FEIR to imply that the discussion of conflicts with existing zoning for agricultural use and Williamson Act contracts is "negligible" by ignoring and omitting the more detailed discussion under Impact AG-1, which explains the reasoning for the Regional Board finding certain impacts to be speculative and is referenced in the quoted passage from Impact AG-2.[664]

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[661] DEIR, at p. 3.1-27, AR6479; FEIR, vol. 1, at p. 3.1-25, AR0625 (strikeout text).

[662] DEIR, at p. 3.1-28, AR6480; FEIR, vol. 1, at p. 3.1-26, AR0626 (strikeout text).

[663] *See* FEIR, vol. 1, at pp. 3.1-24– 3.1-25, AR0624–AR0625.

[664] GS Petition, at p. 72.

Overall, based on the management practices that are reasonably foreseeable under the Proposed Project (again, refer to Tables 2-5 through 2-8 and Table 2-9), there is no reason to believe that implementation of these practices would conflict with a general plan policy.[665] To the contrary, the Proposed Project would implement and further many of the agricultural goals and policies of general plans for counties in the central coast region, many of which relate to conservation and protection of natural resources (e.g., water and soil resources). These include:[666]

Monterey County

- Goal AG-5: Ensure compatibility between the county's agricultural uses and environmental resources.
- Policy AG-5.1: Programs that reduce soil erosion and increase soil productivity shall be supported.
- Policy AG-5.2: Policies and programs to protect and enhance surface water and groundwater resources shall be promoted but shall not be inconsistent with State and federal regulations.

San Benito County

- Policy LU-3.3 Increased Agricultural Sustainability and Energy Efficiency: The County shall encourage and support farms, vineyards, and ranches that seek to implement programs that increase the sustainability of resources, conserve energy, and protect water and soil in order to bolster the local food economy, increase the viability of diverse family farms and improve opportunities for farm workers.

San Luis Obispo County

- Goal AG2: Conserve Agricultural Resources. (a) Maintain the agricultural land base of the county by clearly defining and identifying productive agricultural lands for long-term protection. (b) Conserve the soil and water that are the vital components necessary for a successful agricultural industry in this county.
- Policy AGP9: Soil Conservation. (a) Encourage landowners to participate in programs that reduce soil erosion and increase soil productivity. (b) Emphasize the long-range benefits of proper drainage control and tillage, cropping, soil amendment, and grazing techniques to minimize soil erosion. (c) Assure that roads and drainage systems on county-controlled properties and facilities do not negatively impact agricultural lands and that the roads and systems are properly maintained.

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[665] FEIR, vol. 1, at pp. 2-29–2-35, AR0577–AR0583; *id.*, at pp. 2-39–2-41, AR0587–AR0589.

[666] *See id.*, vol. 2, at pp. B-1–B-4, AR1440–AR1443.

- Policy AGP10: Water Conservation. (a) Encourage water conservation through feasible and appropriate "best management practices." Emphasize efficient water application techniques; the use of properly designed irrigation systems; and the control of runoff from croplands, rangelands, and agricultural roads. (b) Encourage the U.C. Cooperative Extension to continue its public information and research program describing water conservation techniques that may be appropriate for agricultural practices in this county. Encourage landowners to participate in programs that conserve water.

San Mateo County

- Goal 2.5, Minimize Depletion of Productive Soil Resources in Agricultural Areas: Minimize depletion of productive soil resources in agricultural areas through application of appropriate management practices.
- Policy 2.27, Regulate Development and Agriculture Against Soil Contamination: Regulate development and agriculture to protect against soil contamination through measures which ensure proper use, storage, and disposal of toxic chemicals and pesticides.
- Policy 2.28, Regulate Agricultural Activities Against Soil Depletion in Agricultural Areas: Regulate agricultural activities to minimize against soil depletion.

Santa Barbara County

- Policy I.F. The quality and availability of water, air, and soil resources shall be protected through provisions including but not limited to, the stability of Urban/Rural Boundary Lines, maintenance of buffer areas around agricultural areas, and the promotion of conservation practices.
- Policy I.G. Sustainable agricultural practices on agriculturally designated land should be encouraged in order to preserve the long-term health and viability of the soil.

The surface water protection requirements in the General Order (e.g., Sediment and Erosion Management Plan [SEMP],[667] requirements related to impervious surfaces [management of stormwater discharge],[668] surface receiving water limits for sediment [Total Maximum Daily Load (TMDL) areas] or turbidity [non-TMDL areas],[669] etc.), in particular, would serve to preserve soil and water resources by reducing erosion and subsequent discharges to receiving waters in agricultural areas.

Without explanation from the agricultural petitioners, it is impossible to determine which county general plan policies and goals related to agricultural resources they believe are not included in Appendix B, or how, specifically, they believe the General Order would

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[667] *See* General Order, pt. 2, § C.3, at p. 36, AR0039.

[668] *See id.*, pt. 2, § C.3, at p. 37, AR0040.

[669] *See id.*, pt. 2, § C.2, at pp. 38 & 75, AR0041, AR0078.

conflict with, or be inconsistent with, such policies or goals. Rather, we are left to guess. Given that this portion of the GS Petition appears to be cut-and-pasted from the Comment Letter BN submitted on the DEIR, it could be assumed that the agricultural petitioners are referring to the general plan goals and policies listed in a footnote to that comment letter.[670] The goals and policies listed there, many of which are also included in Appendix B to the EIR, generally prohibit land uses that interfere with agriculture or seek to conserve agricultural lands. Even in their comments on the DEIR, however, the Agricultural Association Partners (Ag Partners) did not specify how or why they believed the Proposed Project would be inconsistent with the listed general plan goals and policies.[671] For example, the Ag Partners did not indicate whether they believed conflicts with general plan goals and policies would be caused by the riparian and operational setback requirements (included in the DAO at the time of their comments) or some other aspect of the Proposed Project.[672] Particularly with removal of the riparian and operational setback requirements from the RAO/PAO/General Order, it is unexplained how the Proposed Project would conflict with, or be inconsistent with, the general plan goals and policies seeking to conserve agricultural lands.

Alternatively, the agricultural petitioners could be referring to policies and goals related to purely economic or social aspects of the agricultural industry and furthering the economic prosperity of farmers and agricultural support services in the relevant county jurisdiction. As indicated above, the general plan goals and policies included in Appendix B were those goals and policies which were determined to be applicable/relevant to the actions agricultural operators and owners might take in response to the Proposed Project and the environmental analysis pursuant to CEQA. As such, general plan goals and policies related exclusively to economic factors were not included, since these factors are not directly relevant under the CEQA Guidelines.[673] Likewise, goals and policies without a clear nexus to the Proposed Project were not included in Appendix B of the EIR (i.e., because the Proposed Project would not include "development projects", goals and policies related to limitations on development projects were not included). As is discussed in detail in the response to Contention GS-12, subsection E, the Regional Board believes that the Agricultural Petitioners statements and predictions with respect to the economic impacts of the General Order are grossly exaggerated and not based on substantial evidence, and instead, the arguments and estimates rest on speculative assumptions.

In short, contrary to the agricultural petitioners' assertions, the Regional Board did evaluate the consistency of the Proposed Project with general plan goals and policies in several places of the EIR. This consideration did not include a detailed analysis of each

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[670] *See* FEIR, vol. 3, at pp. 3-456–3-457, AR2041–AR2042 (Comment BN-213).

[671] *See id.*, vol. 3, at p. 3-627, AR2212 (Response to Comment BN-212).

[672] *Id.*

[673] *See* discussions in responses to Contentions GS-12, subsections B through E, including the basis for limiting analysis of economic effects to those which would be connected to physical effects on the environment.

goal and policy for each general plan with applicability within the central coast region; however, the Regional Board had reasons for not doing such an analysis, namely that it would be impracticable given the size of the Proposed Project area and numerous local jurisdictions therein; it would be speculative to assume which management practices (apart from setback requirements, no longer included in the General Order) would be implemented in which locations; and, perhaps most significantly, local plans and policies do not govern or restrict the actions and authority of a state agency. Given a general comparison of elements of the General Order (e.g., reasonably foreseeable management practices), it is clear that the General Order would serve to implement and further a number of general plan goals and policies for counties in the central coast region. The agricultural petitioners have not identified any specific goals or policies that they believe would be inconsistent with the General Order or explained how the General Order would be inconsistent with such goals or policies.

Contention GS-14: The FEIR's mitigation measures are improper. (GS Petition, pp. 73-75)

Response GS-14: The agricultural petitioners contend that "certain of the FEIR's mitigation measures included in the FEIR are improper" because they are infeasible, exceed the authority of the Regional Board, and are not "consistent with constitutional standards limiting actions by public agencies, including 'nexus' and 'rough proportionality.'"[674] The Regional Board disagrees.

The FEIR includes nine mitigation measures to address fifteen potentially significant impacts that could result from implementing the General Order.[675] The FEIR concluded that implementation of the mitigation measures would reduce the identified impacts to less than significant.

The text of the GS Petition does not identify any specific mitigation measure that is allegedly improper, and the GS Petition mentions only one potential impact, BIO-3, without addressing the mitigation measures, HWQ-1 and HAZ-1, that the FEIR concludes would reduce the potential impact to a level that is less than significant.[676] The citations in footnote 239 of the GS Petition refer to the Central Coast Water Board's CEQA Finding of Facts, which identifies all impacts that are less than significant with

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[674] GS Petition, at 73, citing CEQA Guidelines, § 15126.4(a)(4).

[675] FEIR, vol. 1, at pp. 3.3-28–3.3-29, AR0672–AR0673 (describing Mitigation Measure BIO-1); *id*., vol. 1, at pp. 3.4-15–3.4-16, AR0693–AR0694 (describing Mitigation Measure CUL-1); *id*., at p. 3.4-16, AR0694 (describing Mitigation Measure CUL-2); *id*., vol. 1, at p. 3.4-18, AR0696 (describing Mitigation Measure CUL-3); *id*., vol. 1, at p. 3.8-24, AR0780 (describing Mitigation Measure HAZ-1); *id*., vol. 1, at pp. 3.8-25, AR0781 (describing Mitigation Measure HAZ-2); *id*. at p. 3.9-50, AR0836 (describing Mitigation Measure HWQ-1); *id*., vol. 1, at p. 3.9-53, AR0839 (describing Mitigation Measure HWQ-2); *id*., vol. 1, at p. 3.10-9, AR0849 (describing Mitigation Measure NOI-1).

[676] GS Petition, at p. 74 & fn. 239 (citing Resolution No. R3-2021-0039, Attachment B, CEQA Findings of Fact, identifying all mitigation measures); FEIR, vol. 1, at pp. 3.3-30–3.3-31, AR0674–AR0475 (discussing Impact BIO-3).

mitigation and the nine mitigation measures in the FEIR. The citation to the FEIR in footnote 239 of the GS Petition, on the other hand, refers to the discussions of potential impacts to biological resources, impacts related to hazards and hazardous materials, and impacts to tribal cultural resources. Absent any clear indication in the GS Petition as to what "certain" mitigation measures are allegedly improper, for the purposes of this response, the Central Coast Water Board presumes that the agricultural petitioners are challenging all of the mitigation measures. Thus, although the agricultural petitioners argue that "certain" mitigation measures are improper, it is left to the Regional Board to connect the dots between a smattering of generalized complaints and all of the FEIR's mitigation measures to which those complaints may or may not apply. As a result of this dearth of specificity, discussion, or substantial evidence, the Regional Board is denied an opportunity to meaningfully comment upon specific alleged improprieties among the challenged mitigation measures. Nevertheless, the Regional Board disagrees that the mitigation measures are infeasible, exceed the Regional Board's authority, are unconstitutional, or otherwise improper.

A. Feasibility

Concerning feasibility, the agricultural petitioners allege that the mitigation measures are infeasible because it is uncertain "how these measures would be triggered" and because they exceed the Regional Board's authority over normal farming activities beyond what is otherwise required or allowed by state and federal law.

The Regional Board disagrees that the mitigation measures are infeasible. CEQA requires that "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves *whenever it is feasible to do so*."[677] As used in CEQA, the term "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.[678] Like conclusions regarding significant impacts, findings of infeasibility must be supported by substantial evidence.[679] Further, even if "specific economic, social, or other conditions make infeasible . . . mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."[680]

This issue was previously raised, verbatim, in Comment BN-221 on the DEIR. In its response to that comment, the Regional Board stated that the commenter did not provide substantial evidence that challenged mitigation measures would be infeasible

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[677] PRC, § 21002.1(b); CEQA Guidelines, § 15041, emphasis added.

[678] PRC, § 21061.1.

[679] CEQA Guidelines, § 15091(b).

[680] PRC, § 21002.

and that, in most cases, those challenged "merely require compliance with existing state law and permitting requirements."[681]

The agricultural petitioners' claim here is likewise deficient. It does not discuss a legal standard for adjudging the "feasibility" of mitigation measures under CEQA; does not explain or offer substantial evidence as to how uncertainty as to the mitigation measures' "triggers" would make those mitigation measures infeasible, nor discuss whether that uncertainty could be resolved through discussions with the Regional Board and other responsible agencies; does not explain how the challenged mitigation measures exceed the Regional Board's authority; and does not explain or offer substantial evidence as to how the Regional Board's alleged exceedance of authority bears on the mitigation measures' feasibility. As a result, it is unclear how or why the agricultural petitioners believe the mitigation measures are infeasible and, even if it were clear, the agricultural petitioners have failed to provide substantial evidence to support that contention.

B. Authority

Concerning the Regional Board's authority to require and enforce the EIR's mitigation measures, the agricultural petitioners allege that the mitigation measures "expand the . . . Board's authority over normal farming activities beyond what is otherwise required or allowed by state and federal law."[682] The Regional Board disagrees that the mitigation measures exceed the Regional Board's authority.

CEQA requires that mitigation measures must be enforceable through conditions of approval, contracts, or other means that are legally binding.[683] California courts have held that mitigation measures requiring compliance with existing regulations are reasonable and proper where it is reasonable to expect compliance.[684] To this end, "CEQA allows an agency to approve or carry out a project with potential adverse impacts if binding mitigation measures have been 'required in, or incorporated into' the project *or* if '[t]hose [measures] are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.'"[685] Thus, where the implementation of mitigation measures is the responsibility of other agencies, the lead agency has satisfied its burden under CEQA if the record supports the conclusion that these other agencies "can and should" do so, even if the lead agency may not be able to guarantee that those agencies will cooperate in the

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[681] FEIR, vol. 3, at p. 3-629, AR2214 (Response to Comment BN-221).

[682] GS Petition, at p. 74, citing Wat. Code, § 13360(a) (limiting the Board's authority to mandate particular manner of compliance with its requirements, orders, or decrees).

[683] PRC, § 21081.6(b); CEQA Guidelines, § 15126.4(a)(2).

[684] *Oakland Heritage Alliance v. City of Oakland* (2011) Cal.4th 884, 906; *see also Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 234 Cal.4th 214, 245.

[685] *Neighbors for Smart Rail v. Exposition Metro Line Construction Auth.* (2013) 57 Cal.4th 439, 465 (*Neighbors*), citing Pub. Res. Code § 21081 and CEQA Guidelines § 15091(b).

implementation of measures under their respective jurisdictions.[686] Consistent with this doctrine, and contrary to the agricultural petitioners' claim, the FEIR does not claim that the Regional Board has the authority to enforce compliance with measures beyond its authority, but rather informs enrollees and the public on what steps need to be taken, as required by law, to properly mitigate the effects of the project. The mitigation measures included the FEIR are required pursuant to the authority of the Regional Board, as well as the authority of other local, state, and federal agencies that "can or should" adopt those measures. This was discussed in the Central Coast Water Board's response to comment BN-221, which also faced the challenge of the comment not clearly identifying the disputed mitigation measures.[687]

The agricultural petitioners also reassert claims previously raised in comment BN-222 concerning the FEIR's analysis of Impact BIO-3, which is the agricultural petitioners' sole example of the mitigation measures' alleged overreach: "[V]arious mitigation measures add a new and expanded level of regulation, and potential further CEQA review, to normal management activities that are not subject to discretionary public agency approvals. For example, [Impact] BIO-3 discusses impacts to state or federally protected wetlands but fails to mention farmlands that are otherwise statutorily exempt from such regulation under the federal Clean Water Act."[688] In the Regional Board's response to that comment, it noted that the comment did not explain the relevance of the exemption from the Clean Water Act to the Regional Board's authority to regulate waste discharges to waters of the state, nor did it provide substantial evidence that this exemption would create a conflict with or otherwise make infeasible the mitigation measures in the DEIR.[689] Likewise, the agricultural petitioners do not now offer additional explanation or evidence of how the mitigation measures related to Impact BIO-3, Mitigation Measures HWQ-1 and HAZ-1, exceed the Regional Board's authority.[690]

The agricultural petitioners merely restate comments to which the Regional Board has already responded, and it is unclear how or why the agricultural petitioners believe the FEIR's mitigation measures are improper exceedances of the Regional Board's authority. Even if it were clear, the agricultural petitioners have failed to provide substantial evidence to support that contention.

C. Constitutional Principles of "Nexus" and "Rough Proportionality"

The agricultural petitioners also allege that "certain" mitigation measures are improper because they exceed constitutional limitations on the Regional Board's authority related

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[686] *Id.*, at pp. 518–519.

[687] FEIR, vol. 3, at p. 3-629, AR2214 (Response to Comment BN-221).

[688] GS Petition, at p. 73 (citing 33 C.F.R. § 328.3(a)(8)); *see also* FEIR, vol. 3, 3-460, AR2045 (Comment BN-222).

[689] FEIR, vol. 3, at p. 3-630, AR2215 (Response to Comment BN-222).

[690] *Id.*, vol. 1, at p. 3.3-31, AR0675 (identifying mitigation measures for Impact BIO-3).

to “rough proportionality” and “nexus.” In particular, the agricultural petitioners claim measures requiring “cultural resource surveys, biology surveys, and wetlands delineation and mitigation on individual fields [are] not roughly proportional to the likely less than the [sic] significant impact from management decisions on a single farm” and because the Regional Board allegedly cannot “establish a rational nexus between the expanded regulation and cost imposed in the measures and the as yet unidentified impacts from any of these potential management practices.”[691]

The legal core of this contention is drawn from CEQA Guidelines section 15126.4, subdivision (a)(4), which provides in relevant part that for mitigation measures to be constitutional, “there must be an essential *nexus* (i.e. connection [or reasonable relationship]) between the mitigation measure and a legitimate governmental interest”[692] and those measures “must be ‘roughly proportional’ to the impacts of the project.”[693]

The seminal cases on constitutional “nexus” and “rough proportionality” are *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994), respectively.[694] In these cases, the U.S. Supreme Court addressed the question of whether the government could constitutionally require landowners to convey easements across their privately owned property in exchange for the granting of land-use development permits. In *Nollan*, the Court held that a city government could not condition a building permit on the granting of a public easement across a beachfront lot because there was no “essential nexus” between the legitimate state interest (defined by the city as maintaining the public's visual access to the ocean) and the condition imposed (requiring lateral public access across a private lot).[695] In *Dolan*, the Court in turn found that while an “essential nexus” existed between the legitimate state interest (flood and traffic control) and the condition imposed (the dedication of property for flood control and a pedestrian/bicycle path), the exaction nevertheless failed to pass constitutional muster because there was no “rough proportionality” between the condition and the projected impact of the proposed development.[696] Thus, “*Nollan* and *Dolan* thus put forth a two-prong test for analyzing the constitutionality of a land-use condition: (1) Is there an ‘essential nexus’ between the condition imposed and a legitimate government purpose? And, if so, (2) is there a ‘rough proportionality’ between the required dedication and the impact of the proposed development such that they are related both in nature and extent?”[697]

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[691] GS Petition, at p. 74.

[692] CEQA Guidelines, § 15126.4(a)(4)(A), citing *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (*Nollan*); *see also Dolan v. City of Tigard* (1994) 512 U.S. 374, 387 (*Dolan*).

[693] CEQA Guidelines, § 15126.4(a)(4)(B), citing *Dolan*, 512 U.S. 374.

[694] *See Nollan,* 483 U.S. 825; *see also Dolan,* 512 U.S. 374.

[695] *Nollan,* 483 U.S. at 837.

[696] *Dolan*, 512 U.S. at 391.

[697] *Casitas Mun. Water Dist. v. United States* (2011) 102 Fed.Cl. 443, 476.

In the present case, there is a "nexus" between the FEIR's mitigation measures and the governmental purposes these measures seek to achieve, and those measures are "roughly proportional" to the impact they seek to address. This issue was previously raised in Comment BN-222.[698] The Regional Board's response to that comment noted, concerning "nexus," that a range of applicable state and federal interests would be furthered by the challenged mitigation measures, including well-documented "state and federal governments' interests in protecting water quality, protecting endangered species, preventing environmental contamination from hazardous substances, protecting cultural resources, protecting tribal cultural resources, and controlling noise impacts."[699] Moreover, the Regional Board's response noted that the commenter failed to present substantial evidence that any specific mitigation measure conflicted with this constitutional requirement.[700] Concerning "rough proportionality," the Regional Board responded that the commenter likewise failed to provide substantial evidence that the costs of implementing the General Order's mitigation measures are not proportional to the Project's impacts.[701] Additionally, the Regional Board stated that many of the mitigation measures' conditions were already required under existing laws and regulations.[702] This is relevant because, to the extent that certain mitigation measures or costs are already required under pre-existing law, the "rough proportionality" of the General Order's mitigation measures should be evaluated only to the extent that they impose new requirements.

The agricultural petition, which recites comment BN-222 verbatim, likewise fails to present any substantial evidence to support the claim that the FEIR's mitigation measures do not have a "nexus" or "rough proportionality" to the impacts they seek to mitigate. Nor does the GS Petition contain explanation or discussion of the concepts of "nexus" or "rough proportionality" or any explanation or discussion of how any particular measure fails to meet these standards. Thus, although the Regional Board explicitly highlighted the deficiencies of this contention in response to comment BN-222, the agricultural petitioners have made no attempt to clarify or supplement this otherwise naked assertion. As a result, it is unclear why the agricultural petitioners believe that the FEIR's mitigation measures exceed constitutional limitations related to "nexus" and "rough proportionality" and, even if it were clear, the agricultural petitioners have not presented any evidence to support these claims.

In conclusion, the Regional Board disagrees that the FEIR's mitigation measures are improper. The Regional Board's responses to comments BN-221 and BN-222 made clear that this was the case and stated that those comments did not contain substantial evidence or explanation to the contrary. Nevertheless, the agricultural petitioners

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[698] FEIR, vol. 3, at p. 3-630, AR2215 (Response to Comment BN-222).

[699] *Id.*

[700] *Id.*

[701] *Id.*

[702] *Id.*

repeated these points, verbatim, without any additional evidence, explanation, or clarification. As such, Regional Board once again replies that, as the record clearly shows, the prescribed measures are feasible, properly based in the authority of the Regional Board and other agencies, and concordant with constitutional principles of "nexus" and "rough proportionality."

Contention GS-15: The FEIR fails to consider the significance of social and economic impacts and cumulative effects. (GS Petition, pp. 75-77)

Response GS-15: The Central Coast Water Board disagrees with this contention.

The agricultural petitioners contend that "the FEIR contains no cumulative impacts analysis on social and economic resources impacted by the project" despite substantial evidence that the project would have significant social and economic impacts."[703] At its core, this contention stems from the agricultural petitioners' belief that that the Regional Board improperly dismissed or otherwise failed to consider allegedly substantial evidence raised in public comments on the DEIR and, as a result, the Regional Board incorrectly concluded that increased costs under the General Order would not result in significant impacts on the environment. As addressed in responses to Contentions GS-11 through GS-14, the Regional Board disagrees that it dismissed or otherwise failed to consider substantial evidence presented in comments in its evaluation of significant impacts in the FEIR.

The Regional Board likewise disagrees that its treatment of social and economic effects in its cumulative impacts analysis was improper. A cumulative impact consists of an impact that is created by the combination of the project evaluated in the EIR together with other projects causing related impacts.[704] The CEQA Guidelines require an EIR to describe and analyze cumulative impacts only if the combined impact is significant and the project's incremental effect is "cumulatively considerable."[705] However, no analysis is required if the impact is insignificant or the project's incremental contribution is not cumulatively considerable.[706] If the lead agency determines that a project's incremental effect is not cumulatively considerable, the EIR need not discuss it.[707]

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[703] GS Petition, at pp. 76–77.

[704] CEQA Guidelines, § 15130(a)(1).

[705] *Id.* § 15130.

[706] *City of Long Beach v. Los Angeles Unified Sch. Dist.,* 19 Cal.5th at p. 909, citing 1 Kostka & Zischke, Practice Under CEQA, § 13:40.

[707] *See*, *e.g.*, *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal. App. 4th 786, 799 (when a project adds no impacts, there is no cumulative impact to discuss); *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690, 701-702 (when there is no substantial evidence of any individual potentially significant effect, lead agency may conclude effects of project not cumulatively considerable); CEQA Guidelines, § 15130(a)(2).)

"Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects,…other current projects,…and probable future projects."[708] "When there is no substantial evidence of any individual potentially significant effect by a project under review, the lead agency may reasonably conclude the effects of the project will not be cumulatively considerable, and it need not require an EIR on this basis."[709] Cumulative impacts analyses "should be guided by standards of practicality and reasonableness."[710]

Thus, CEQA does not require a lead agency to analyze cumulative impacts of social and economic changes resulting from a project unless there is substantial evidence that those changes, individually and/or cumulatively, will result in substantial, adverse physical impacts on the environment. In this case, the FEIR contains analysis of potential economic and social impacts, as well as analysis of potential cumulative impacts, based on substantial evidence.[711] Based on that analysis, the Regional Board determined that significant impacts would not foreseeably result. Rather, substantial evidence in the record indicated that physical impacts resultant from the General Order's social and economic effects could not be reasonably foreseen because of the significant variability of Dischargers' existing conditions and needs (e.g., geography, acreage, crop selection, economic status, etc.), the variability of avenues to compliance with the General Order (e.g., individual vs. 3rd party approaches), and the variability of choices that can or will be made by individual Dischargers in response to the General Order.

This was previously explained in the Regional Board's response to Comment BN-244 and Master Response to Comments 2.10.2. In response to Comment BN-244, the Regional Board noted that "no part of Public Resources Code Section 21083 mandates that an agency must treat all economic and social effects as significant adverse effects on people under CEQA."[712] That response further noted that Comment BN-244 did not provide substantial evidence that cumulative effects of social and economic change resultant from the General Order "would produce a physical change in the environment beyond the impacts already identified and disclosed in the DEIR and thus that the DEIR would find new previously undisclosed significant impacts or substantially worse impacts."[713] Response to Comment BN-244 then directed reviewers to Master Response 2.10 for additional discussion.

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[708] CEQA Guidelines, § 15065(a)(3).

[709] *Sierra Club v. W. Side Irrigation Dist.*, 128 Cal. App. 4th at 701–02, dist'd. on other grounds.

[710] CEQA Guidelines, § 15130(b).

[711] *See generally* FEIR, vol. 1, at pp. 3.5-1–3.12-4, AR0595–AR0864 (Environmental Analysis); *see also id.*, at pp. 3.5-1–3.5-42, AR0697–AR0738 (Economics); *id.*, at pp. 5-2–5-14, AR0908–AR0920 (Cumulative Impacts).

[712] FEIR, vol. 3, at p. 3-636, AR2221 (Response to Comment BN-244).

[713] *Id.*

Master Response 2.10.2 explained the standards by which economic and social impacts are to be evaluated:

> The CEQA Guidelines clearly state that economic and social effects of a project are significant only so far as they would result in an adverse physical change in the environment. CEQA Guidelines Section 15064(e) states:
>
> Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the 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. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.
>
> CEQA Guidelines Section 15064(f)(6) also states:
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> Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.[714]

Based on these standards, the Regional Board analyzed both whether the reasonably foreseeable social and economic effects of the General Order would cause adverse physical change to the environment and whether the General Order's foreseeable adverse changes to the environment were "significant," based in part on conceivable social and economic effects of those changes.

In doing so, the Regional Board complied with the ruling in *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985), as cited by the agricultural petitioners. That case provides "that the lead agency *shall* consider the secondary or

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[714] *Id.*, vol. 3, at p. 2-53, AR1582 (Master Response 2.10.2).

indirect environmental consequences of economic and social changes," but also notes that the lead agency has the "discretion to determine whether consequences of economic and social changes are significant."[715] Accordingly, the Regional Board considered substantial evidence in the record concerning the potential indirect effects of the General Order and concluded that foreseeable economic and social impacts would not be significant. As stated in Master Response to Comments 2.10.2:

> [A]s described in FEIR, Volume 1, Section 3.5 [*Economics*], the fact that the Agricultural Order 4.0 would increase the costs of compliance for growers is not enough to conclude that the economic impacts would be significant. Rather, it would need to be shown, with substantial evidence, that the increased costs borne by growers would result in an adverse physical change in the environment. This was the reasoning behind the first significance criterion used in the economic impact analysis ("Increase costs for growers to such a degree that it would cause or result in growers going out of business, such that agricultural lands would converted to non-agricultural uses"). As such, the intent was not to downplay the significance of the economic effects on the agricultural community, but rather to comport with the requirements of CEQA governing the relationship between economic factors and physical environmental effects.[716]
>
> Given CEQA's prohibition on speculation, the DEIR provided a good faith effort to calculate the additional costs of the DAO 4.0 that could be reasonably estimated, and to disclose the economic effects and factors that could not be estimated or accurately quantified.[717]

Thus, the Central Coast Water Board considered and deemed less-than-significant those impacts that were foreseeable, based on substantial evidence. Conversely, proposed potential impacts that were not supported by substantial evidence or that were based in speculation were evaluated and dismissed. In fact, the Regional Board even considered the evidence presented in the GS Petition that "Once implemented, Ag Order 4.0's requirements will result in dramatic and severe impacts on the agricultural industry, which will have a significant effect on the economic and social environment of the region."[718] That list of evidence was first introduced in the ERA Economics Technical

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[715] *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 170.

[716] FEIR, vol. 3, at p. 2-53–2-54, AR1582–AR1583 (Master Response 2.10.2).

[717] *Id.*, vol. 3, at p. 2-54, AR1583 (Master Response 2.10.2) (referencing tables in FEIR Ch. 3.5 evaluating economic data).

[718] GS Petition, at p. 76.

Memorandum, No. 1, to which the Regional Board previously responded with 80 individual responses to comments and discussion in several Master Responses to Comments.[719] As discussed in those responses and reiterated in response to Contention GS-12, subsection E, the ERA Economics Memorandum largely did not contain substantial evidence because of its speculative nature and limited scope. As a result, that study was properly not relied upon for substantial evidence of significant economic and physical impacts on the environment. Moreover, although the agricultural petitioners plainly disagree with the Regional Board's conclusions as to the insubstantiality of the ERA Memoranda, the agricultural petitioners make no attempt to remedy that insubstantiality or to supplement the record with additional substantive evidence. Nor do the agricultural petitioners provide explanation of *how* this rehashed evidence proves that significant adverse physical impacts will be caused by the General Order. Instead, the agricultural petitioners merely repeat previously dismissed evidence and claim, without explanation, that from a perspective different than the Regional Board's, the agricultural petitioners' own conclusions should have been reached.

The agricultural petitioners' claim that "the FEIR contains no cumulative impacts analysis on social and economic resources" is also plainly false. The FEIR discussed foreseeable cumulative impacts of the General Order in Chapter 5.4, including potential impacts on agricultural resources and cultural resources, both of which concern social and economic factors.[720] Furthermore, Table 5-3 in that chapter explicitly provides rationale for dismissing further consideration of economics from the cumulative impacts analysis:

> As discussed in Section 3.5, Economics, the potential for agricultural lands to be converted to non-agricultural uses as a result of increased costs of compliance from Agricultural Order 4.0 is speculative. The specific impacts of Agricultural Order 4.0 would depend on the specific characteristics of individual ranches/operations (e.g., crop mix, operating costs/capital, cash reserves) which can also change season by season and year to year for various reasons. Additionally, even with increased compliance costs, it is speculative to determine whether this would lead individual growers to sell or stop renting their lands, and then whether the new landowners would convert those lands to non-agricultural uses. Lastly, none of the projects listed in Table 5-1 would necessarily result in increased costs for farms or ranches such that conversion of irrigated agricultural lands to non-agricultural uses would occur. For these reasons, the

[719] FEIR, vol. 3, at pp. 3-640–3-53, AR2225–AR2238 (Responses to Comments BN-288 through BN-367); *id.*, vol. 3, at pp. 2-47–2-55, AR1576–AR1584) (Master Responses 2.9–2.10).

[720] *See id.*, vol. 1, at pp. 5-2–5-14, AR0908–AR0920.

> Proposed Project would not contribute to a cumulative significant impact related to economics.[721]

Thus, the Regional Board properly considered the cumulative impacts of the Proposed Project, including impacts related to economic and social effects, that were foreseeable and supported by substantial evidence in the record. Proposed effects that were speculative, unsupported by substantial evidence, or which would not foreseeably result in physical impacts on the environment were properly dismissed. As has been discussed in previous responses, the mere fact that the FEIR did not reach the conclusions that agricultural petitioners sought is not evidence of a procedural failing. As the California Supreme Court has warned, "A project opponent . . . can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR."[722]

Contention CCA-7: The Regional Board failed to comply with CEQA by not recirculating the EIR prior to certification. (CCA Petition, pp. 25-26)

Response CCA-7: The Central Coast Water Board disagrees that it was required to recirculate the EIR prior to certification. Although the project changed between the Draft EIR and the Final EIR, the changes did not result in new or more significant adverse impacts that were not already analyzed.

Public Resources Code section and CEQA Guidelines section 15088.5, subdivision (a), together provide that when new information is added to an EIR after the close of public comment period and before the EIR is certified, recirculation of the EIR for additional public comment is required where the new information is significant.[723] For purposes of CEQA Guidelines section 15088.5, subdivision (a), the term "information" can include "changes in the project or environmental setting as well as additional data or other information." Subdivision (a) also provides that "[n]ew information is not 'significant' *unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement.*"[724] "A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record."[725] In other words, CEQA requires recirculation of an EIR when changes to the project result in new or more significant adverse environmental impacts that are not already analyzed in the

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[721] *Id.*, vol. 1, at pp. 5-7–5-8, Table 5-3, AR0913–AR0914.

[722] *National Parks & Conserv. Assn. v. County of Riverside* (1999) 71 Cal.4th 1341, 1359–61, citing *Laurel Heights I*, 47 Cal.3d. at p. 415.

[723] Pub. Res. Code § 21092.1; CEQA Guidelines § 15088.5, subd. (a); *Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1126–30.

[724] CEQA Guidelines, § 15088.5, subd. (a) (emphasis added).

[725] *Id.* § 15088.5, subd. (e).

EIR. If the project changes do not create new or more significant environmental impacts, then the lead agency is not required to recirculate the EIR.

In this case, the project changed when the Draft Agricultural Order released in February 2020 underwent revisions after the Central Coast Water Board circulated the Draft EIR. The environmental petitioners argue that the changes made to the riparian requirements between the Draft Agricultural Order and the adopted General Order required the Central Coast Water Board to recirculate the EIR prior to certification because "the Regional board did not allow adequate time for stakeholders . . . to consider the ecological implications of [changing the proposed project]."[726] The environmental petitioners further state that "[t]he Revised Draft bore little resemblance to the preferred project described in the February 2020 Draft Environmental Impact Report (DEIR)."[727] Contrary to the environmental petitioners' assertion, project changes are not the sole drivers of the requirement to recirculate an environmental impact report. As previously stated, the appropriate inquiry when a lead agency changes a project after a draft environmental impact report has been circulated is whether the environmental impacts of the changed project create additional or more significant adverse impacts as compared to any existing adverse impacts of the project that have been analyzed. The environmental petitioners fail to demonstrate that the changes to the project meet the criteria for recirculation set forth in CEQA Guidelines section 15088.5, subdivision (a), and in fact, the changes between the Draft Agricultural Order and the adopted General Order *decrease the significance* of the potential adverse environmental impacts.

The Draft Agricultural Order includes requirements for the Discharger to implement operational and riparian setbacks.[728] Using significance criteria based on the environmental factors in Appendix G of the CEQA Guidelines, the Draft EIR analyzes the potential environmental impacts of implementing the setback requirements and identified significant and unavoidable environmental impacts to agriculture and forestry resources: "Significant and unavoidable impacts were identified for conversion of agricultural land to non-agricultural uses and conflicts with existing zoning for agricultural use and Williamson Act contracts due to the proposed setback requirements."[729] For all other significance criteria, the Draft EIR concludes that the proposed project had no potential impacts to the environment or that the potential impacts of the proposed project were either less than significant or less than significant with mitigation incorporated.[730]

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[726] CCA Petition, at p. 26.

[727] *Id.*

[728] Draft Agricultural Order, at pp. 41–47, AR6913–AR6919.

[729] DEIR, vol. 1, at p. ES-12, AR6382; *see also id.*, at pp. 3.1-21–3.1-29, AR6473–AR6481.

[730] *Id.*, vol. 1, at pp. ES-17–ES-25, AR6387–AR6395.

The General Order does not include the operational and riparian setback requirements, and this project change is reflected in the Final EIR.[731] The Final EIR analyzes the environmental impacts of the changed project without the operational and riparian setback requirements and determines that the changed project no longer had significant and unavoidable impacts on agriculture and forestry resources.[732] The Final EIR also discusses the changes made to the Draft EIR to align with changes made to the Draft Agricultural Order:

> The removal of the riparian and operational setback requirements was carried throughout the remainder of the DEIR, including Chapter 3, Environmental Analysis. Generally, mention of the setback requirements, including any analysis of the potential environmental impacts of implementing the riparian and operational setback requirements, was struck from the DEIR. In Section 3.1, *Agriculture and Forestry Resources*, this led to the significant and unavoidable impacts to Important Farmland and Williamson Act contract lands (Impacts AG-1 and AG-2) being reduced to less than significant (since the significant and unavoidable impact determination was entirely driven by the riparian and operational setback requirements).[733]

The Final EIR, like the Draft EIR, concludes that for all other environmental factors used as significance criteria, the project had no potential impacts to the environment, or the potential impacts of the project were either less than significant or less than significant with mitigation incorporated.[734] The record includes substantial evidence that the project changes did not result in new or more significant impacts and actually decreased the potential impacts to the environment. Accordingly, the Central Coast Water Board did not trigger the requirement to recirculate the EIR, and the Regional Board's decision not to do so prior to certification of the Final EIR is not a violation of CEQA.

VII. CONCLUSION

For the foregoing reasons, the Central Coast Water Board respectfully urges the State Water Board to deny the agricultural petitioners' and environmental petitioners' requests to remove the contested provisions of the General Order and to uphold the General Order and the final Environmental Impact Report in their entirety.

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[731] FEIR, vol. 1, at pp. 2-22–2-23, AR0570–AR0571.

[732] *Id.*, vol. 1, at p. ES-14, AR0522, *see also id.*, at pp. 3.1-19–3.1-27, AR0619–AR0627.

[733] *Id.*, vol. 3, at p. 5-4, AR4281.

[734] *Id.*, vol. 1, at p. ES-19–ES-27, AR0527–AR0535.