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13 SAN MATEO COUNTY FARM BUREAU;
14 SANTA BARBARA COUNTY FARM BUREAU;
15 SANTA CLARA COUNTY FARM BUREAU;
16 SANTA CRUZ COUNTY FARM BUREAU

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

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

21 v.

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

SWRCB/OCC File: A-2209 (a)-(e)
**CALIFORNIA FARM BUREAU
FEDERATION, MONTEREY COUNTY
FARM BUREAU, SAN BENITO
COUNTY FARM BUREAU, SAN LUIS
OBISPO COUNTY FARM BUREAU,
SAN MATEO COUNTY FARM
BUREAU, SANTA BARBARA COUNTY
FARM BUREAU, SANTA CLARA
COUNTY FARM BUREAU, AND SANTA
CRUZ COUNTY FARM BUREAU'S
RESPONSE TO MONTEREY
COASTKEEPER, SANTA BARBARA
CHANNELKEEPER, AND SAN LUIS
OBISPO COASTKEEPER'S PETITION
REQUESTING REVIEW OF
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD ORDER
NO. R3-2012-0011**

26 The California Farm Bureau Federation, Monterey County Farm Bureau, San Benito County
27 Farm Bureau, San Luis Obispo County Farm Bureau, San Mateo County Farm Bureau, Santa Barbara
28 County Farm Bureau, Santa Clara County Farm Bureau, and Santa Cruz County Farm Bureau

1 (collectively “Farm Bureau”) hereby respond to Monterey Coastkeeper, Santa Barbara Channelkeeper, and
2 San Luis Obispo Coastkeeper’s (collectively “Coastkeeper”) petition to the State Water Resources Control
3 Board (“State Board”) requesting review of the Central Coast Regional Water Quality Control Board’s
4 Order No. R3-2012-0011. Farm Bureau supports the “Response To Coastkeeper’s Petition” submitted
5 by Theresa A. Dunham on behalf of the Grower-Shipper Association of California, Grower-Shipper
6 Association of Santa Barbara & San Luis Obispo Counties, and Western Growers on October 31, 2012
7 and hereby incorporates by reference the entirety of the above mentioned Response.

8 I. ARGUMENT

9 In its petition, Coastkeeper alleges that the “Final Order is inadequate to address the severe
10 nitrate contamination in the Central Coast Region” because the “the Regional Board arbitrarily
11 revised” the nitrogen balance ratio targets prior to adoption. (See Coastkeeper Petition, pp. 3-4, 9.)
12 Specifically, Coastkeeper challenges Condition 78, which states:

13 By October 1, 2015, Tier 3 Dischargers with High Nitrate Loading Risk farms/ranches
14 must report progress towards the following Nitrogen Balance ratio milestones or
15 implement an alternative to demonstrate an equivalent nitrogen load reduction. The
16 Nitrogen Balance ratio refers to the total number of nitrogen units applied to the crop
17 (considering all sources of nitrogen) relative to the typical nitrogen uptake value of the
crop (crop need to grow and produce, amount removed at harvest plus the amount
remaining in the system as biomass).

18 (Order No. R3-2012-0011 p. 29, ¶¶ 78.) Condition 78 continues by specifying specific goals:

- 19 a. Dischargers producing crops in annual rotation (such as a cool season vegetable in a
20 triple cropping system) must report progress towards a Nitrogen Balance ratio target
equal to one (1).
- 21 b. Dischargers producing annual crops occupying the ground for the entire year (e.g.,
22 strawberries or raspberries) must report progress towards a Nitrogen Balance ratio
target equal to 1.2.

23 (*Id.* at p. 30, ¶¶ 78(a), (b).) Of particular concern to Coastkeeper is the use of the phrase “must report
24 progress towards” the appropriate nitrogen balance ratio targets as this language allegedly “is
25 inconsistent with the Basin Plan’s biostimulatory substance objectives and domestic drinking water
26 standards” and therefore violates the Basin Plan and Water Code section 13269(a)(1). (Coastkeeper
27 Petition, pp. 11-12.) Unfortunately, Coastkeeper’s allegations are devoid of legal or factual support.

1 Although Coastkeeper may not agree with the Central Coast Regional Water Quality Control
2 Board’s (“Central Coast Regional Board”) replacement of the word “meet” with “make
3 progress/report progress,” such a revision does not equate to inconsistencies with the Basin Plan or
4 with Water Code section 13269. Thus, Coastkeeper’s arguments must be dismissed.

5 **A. Neither the Water Code, the Nonpoint Source Policy, Nor the Basin Plan Require**
6 **“Firm” or Immediate Compliance with Water Quality Standards**

7 Coastkeeper improperly alleges that the use of milestones rather than targets violates Water
8 Code section 13269 because the milestones are not “firm.” (See Coastkeeper Petition, p. 12.) Water
9 Code section 13269, the section governing conditional waivers of waste discharge requirements,
10 contains no provisions requiring “firm” or immediate compliance with water quality standards.
11 Additionally, the Nonpoint Source Policy also does not require immediate compliance with water
12 quality standards. Nonpoint Source Policy Key Element 2 states: “We recognize that in the earlier
13 stages of some pollution control programs, *water quality changes may not be immediately apparent*,
14 even with the implementation of pollution control actions. Although MP implementation never may
15 be a substitute for meeting water quality requirements, MP implementation assessment may, in some
16 cases, be used to measure nonpoint source control programs.” (Nonpoint Source Policy, p. 12,
17 emphasis added.) Nonpoint Source Policy Key Element 3 goes on to state, “where a RWQCB
18 determines it is necessary *to allow time to achieve water quality requirements, the NPS control*
19 *implementation program shall include a specific time schedule*, and corresponding quantifiable
20 milestones designed to measure progress toward reaching the specified requirements.” (*Id.* at p. 13,
21 emphasis added.) As evidenced by the Nonpoint Source Policy, implementation of management
22 practices (“MP”) is the process for achieving water quality standards. This exact method, recognized
23 and supported by the State Board, can require time, and necessitates flexibility. (*Ibid.*, *Id.* at p. 10,
24 [“The RWQCBs have broad flexibility and discretion in using their administrative tools to fashion
25 NPS management programs.”].) Imposing immediate compliance with water quality standards
26 improperly conflicts with the Nonpoint Source Policy, Water Code section 13269 and State Board
27 precedent. Thus, Coastkeeper’s allegations regarding the need for “firm” nitrogen balance targets are
28 unsupported.

1 **B. The Basin Plan Does Not Require the Use of Nitrogen Balance Ratios**

2 In addition to being inconsistent with the Water Code and the Nonpoint Source Policy,
3 Coastkeeper’s allegations are unsupported by the Basin Plan. Coastkeeper alleges that the use of
4 nitrogen balance “milestones” that make progress toward a ratio violates the Basin Plan. However,
5 Coastkeeper fails to provide any citation or documentation to support its claims. The Central Coast
6 Regional Board’s Basin Plan does not require nitrogen balance ratios.¹ Further, any such requirement
7 in the Basin Plan would violate California Water Code section 13360(a) as it would be a dictation of
8 the manner of compliance.

9 **C. The Central Coast Regional Board Cannot Dictate the Manner of Compliance**

10 In direct contrast to Coastkeeper’s arguments, the Central Coast Regional Board cannot dictate
11 the manner of compliance through its Basin Plan or its orders. (Wat. Code, § 13360(a).) By
12 specifically requiring nitrogen balance targets as regulatory endpoints to meet water quality objectives
13 within its Basin Plan, the Central Coast Regional Board would be violating Water Code section 13360.
14 Water Code section 13360(a) provides in pertinent part that:

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

20 In summation, section 13360 allows the Regional Board to identify the “disease and command that it
21 be cured,” but prohibits the Regional Board from “dictating the cure.” (See *Tahoe Sierra Preservation*
22 *Council v. State Water Resources Control Board* (1989) 210 Cal.App.3d 1421, 1438, [“The .75 inch
23 numerical SUSMP standard is clearly a ‘design’ standard and a particular manner in which
24 ‘compliance may be had,’ and represents ‘dictating the cure.’ As such, it violates the requirements of
25 Water Code Section 13360(a).”].)

26 _____
27 ¹ Farm Bureau does not agree with Coastkeeper’s allegations that the Basin Plan mandates the use of Nitrogen Balance
28 ratios to implement water quality objectives and incorporates by reference those arguments contained in the Response To
Coastkeeper’s Petition submitted by Theresa A. Dunham.

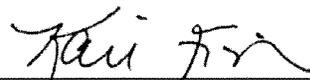
1 The imposition of such “particular manners” of compliance, such as specified nitrogen balance
2 ratios, violates the express prohibition under California Water Code Section 13360(a). “Section 13360
3 is a shield against unwarranted *interference with the ingenuity of the party* subject to a waste discharge
4 requirement...It preserves the freedom of persons who are subject to a discharge standard to *elect*
5 *between available strategies to comply with that standard.*” (*Tahoe-Sierra Preservation Council,*
6 *supra*, (1989) 210 Cal.App.3d 1438, emphasis added.) Such targets do not allow a grower the ability
7 to “elect between available strategies” in order to “cure” the water quality issues. (*Ibid.*) Thus,
8 requiring specific nitrogen balance ratio targets to meet water quality objections would be in direct
9 conflict with Water Code section 13360(a).

10 II. CONCLUSION

11 Based on the foregoing, as well as the previously submitted Petitions and the evidence in the
12 record, Farm Bureau respectfully requests the State Board to dismiss Coastkeeper’s Petition and all of
13 its claims as the claims are legally and factually unsupported. Further, Farm Bureau respectfully
14 requests the State Board to grant the relief requested by Agricultural Petitioners Grower-Shippers et
15 al., Ocean Mist et al., and Farm Bureau in each of its Petitions for Review.

16 Dated: October 31, 2012

CALIFORNIA FARM BUREAU FEDERATION

17
18 

By: KARI E. FISHER

19 Attorney for California Farm Bureau Federation;
20 Monterey County Farm Bureau;
21 San Benito County Farm Bureau;
22 San Luis Obispo County Farm Bureau;
23 San Mateo County Farm Bureau;
24 Santa Barbara County Farm Bureau;
25 Santa Clara County Farm Bureau;
26 Santa Cruz County Farm Bureau

1 **PROOF OF SERVICE**

2 I, **Dianne Chasteen**, declare as follows:

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

5 On this date, I served the following document(s) in the manner set forth below:

6 **CALIFORNIA FARM BUREAU FEDERATION, MONTEREY COUNTY FARM BUREAU,**
7 **SAN BENITO COUNTY FARM BUREAU, SAN LUIS OBISPO COUNTY FARM BUREAU,**
8 **SAN MATEO COUNTY FARM BUREAU, SANTA BARBARA COUNTY FARM BUREAU,**
9 **SANTA CLARA COUNTY FARM BUREAU, AND SANTA CRUZ COUNTY FARM**
10 **BUREAU'S RESPONSE TO MONTEREY COASTKEEPER, SANTA BARBARA**
11 **CHANNELKEEPER, AND SAN LUIS OBISPO COASTKEEPER'S PETITION**
12 **REQUESTING REVIEW OF CALIFORNIA REGIONAL WATER QUALITY CONTROL**
13 **BOARD, CENTRAL COAST ORDER NO. R3-2012-0011**

- 14 **UNITED STATES MAIL [C.C.P. § 1013]** I enclosed the documents in a sealed envelope addressed to the
15 following persons and
 - 16 deposited the sealed envelope with the United States Postal Service with postage thereon fully prepaid at
17 Sacramento, CA addressed as follows:
 - 18 placed the envelope for collection and mailing, following our ordinary business practices. I am readily
19 familiar with our practice for collection processing correspondence for mailing. On the same day that the
20 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with
21 the United States Postal Service, in a sealed envelope with postage thereon fully prepaid at Sacramento,
22 CA address as follows :

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

26 *Tracking No:*

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

Email: EWadhvani@waterboards.ca.gov; attached service list

Executed at Sacramento, CA

Dated: October 31, 2012


Dianne Chasteen

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SWRCB/OCC Files A-2209(a)-(e)

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SWRCB/OCC Files A-2209(a)-(e)

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