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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

SAN JERARDO COOPERATIVE, INC., et al.,
Petitioners,

v.

STATE WATER RESOURCES CONTROL BOARD, et al.,
Respondents,

GROWER-SHIPPER ASSOCIATION OF CENTRAL CALIFORNIA, et al.,
Intervenors.

Case No. 23WM00108

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Date: September 11, 2026
Time: 1:30 p.m.
Dept.: 3B

Assigned for All Purposes to Hon. Stephen Acquisto

No trial date set

Action filed October 27, 2023

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TABLE OF CONTENTS

I. INTRODUCTION 10

II. ORGANIZATION OF THIS BRIEF 11

III. ARGUMENT: PETITIONERS' CLAIMS AGAINST THE STATE WATER BOARD (FIRST, SECOND, FOURTH, AND SIXTH CAUSES OF ACTION) 11

A. The 2023 State Board Order Fails to Make Required Findings. 11

1. The 2023 State Board Order Modified the Terms of Ag Order 4.0. 12

2. Respondents' and Intervenors' Arguments Regarding the State Board's Review Powers Under Section 13320 Ignore Relevant Language. 13

3. As a Result of this Modification, the State Board Was Required to Make Findings, but Failed to Do So. 15

4. There Are No Section 13149.2 Findings, but Such Findings Were Required on Issuance of Modified WDRs. 16

B. The 2018 ESJ Order Did Not Precedentially Control the State Board's Modifications to Ag Order 4.0. 18

1. The State Board's Argument Inverts the ESJ Order's Default Rule that Its Requirements Are Not Precedential Unless Expressly Indicated. 18

2. Because the ESJ Order Only Adopted Some of the 2014 Expert Panel's Recommendations, the ESJ Order Needed to Be, and Was, Explicit About Which Terms Were Precedential. 22

C. The Evidence in the Record Shows That the 2023 State Board Order Failed to Comply with the Law. 23

1. The Modified Order Failed to Comply with the Nonpoint Source Policy. 23

a. Petitioners Correctly State the Nonpoint Source Policy's Requirements. 23

b. No Finding of Compliance with Key Element 2's High Likelihood Standard Would Be Supported by the Evidence. 25

i. The Remaining Features of the Modified Ag Order 4.0 Are Insufficient. 25

ii. The ESJ Order's Approach is Irrelevant. 26

iii. The Remaining Key Element 2 Arguments Lack Merit. 28

c. No Finding of Compliance with Key Element 3's Adequate-Time-Schedules Requirement Would Be Supported by the Evidence. 32

2. The Modified Order Failed to Comply with the Antidegradation Policy. 35

IV. ARGUMENT: PETITIONERS' CLAIM AGAINST REGIONAL WATER BOARD (FIFTH CAUSE OF ACTION).... 37

A. Without Riparian Setbacks, Ag Order 4.0 Does Not Adequately Protect Surface Water or Beneficial Uses. 38

B. Miscellaneous "Concerns" Do Not Justify the Regional Board's Decision to Adopt Ag Order 4.0 Without Riparian Setbacks. 43

C. Staff's Proposed Riparian Setbacks Are Not Ripe for Review, and in Any Event They Are Consistent with Water Code Section 13360. 48

V. CONCLUSION.... 48

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Motor Vehicle Manufacturers Assn. v. State Farm Mutual Automobile Insurance Co. (1983)
463 U.S. 29 44

California Cases

Asociación de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd. (2012)
210 Cal.App.4th 1255 .... 14-15, 16 fn.13-14, 26, 35, 39-40

California Grape & Tree Fruit League v. Industrial Welfare Commission (1969)
268 Cal.App.2d 692 17

California Medical Assn. v. Brian (1973)
30 Cal.App.3d 637 .... 15 fn.11

City of Santa Cruz v. Local Agency Formation Comm'n (1978)
76 Cal. App.3d 381 .... 44 fn.57

County of Santa Clara v. Escobar (2016)
244 Cal.App.4th 555 17

Environmental Law Foundation v. State Water Resources Control Bd. (2023)
89 Cal.App.5th 451 .... 15, 16 fn.15, 24, 27-28, 35, 40 fn.54

Gibble v. Car-Lene Research, Inc. (1998)
67 Cal.App.4th 295 .... 24 fn.28

In re Johnny S. (1995)
40 Cal.App.4th 969 .... 15 fn.11

In re Marti's Estate (1900)
132 Cal. 666 .... 21 fn.25

Jones v. Catholic Healthcare West (2007)
147 Cal.App.4th 300 24

Laurel Heights Improvement Assn. v. Regents of University of California (1988)
47 Cal. 3d 376 .... 17 fn.16

Los Angeles Waterkeeper v. State Water Resources Control Bd. (2023)
92 Cal.App.5th 230 14

Monterey Coastkeeper v. State Water Resources Control Bd. (2018)
28 Cal.App.5th 342 .... 13 fn.9, 19, 24 n.29, 32-33 & fn.44, 35

Monterey Coastkeeper v. Central Coast Regional Water Quality Control Bd. (2022)
76 Cal.App.5th 1 34

Morris v. Williams (1967)
67 Cal.2d 733 .... 15 fn.11

Oakland Heritage Alliance v. City of Oakland (2011)
195 Cal.App.4th 884 .... 31, 38 fn.52

S. California Edison Co. v. Public Utilities Commission (2000)
85 Cal.App.4th 1086 44

State Water Resources Control Board Cases (2006)
136 Cal.App.4th 674 34

Tomra Pacific, Inc. v. Chiang (2011)
199 Cal.App.4th 463 .... 21 fn.25

Topanga Assn. for a Scenic Community v. County of Los Angeles (1974)
11 Cal.3d 506 .... 14-16 & fn.14, 23, 44 fn.57

Wendz v. California Dept. of Education (2023)
93 Cal.App.5th 607 .... 15 fn.11

California Statutes, Regulations, and Legislative Material

Code of Civil Procedure
§ 1085 .... 44 fn.57
§ 1094.5 .... 15, 44 fn.57

Government Code
§ 11425.60 .... 19 fn.18

Water Code
§ 13001 22
§ 13140 22
§ 13149.2 .... 16 n.14, 17 & fn.16, 34 fn.46
§ 13223 22
§ 13240 14
§ 13243 36
§ 13263 .... 14, 22, 40
§ 13267 .... 22 fn.27
§ 13301 26
§ 13320 .... 12, 14 & fn.10
§ 13330 15

§ 13360 48

California Code of Regulations
tit. 23, § 2050.5 .... 29 fn.36
tit. 23, § 2052 .... 15 fn.11

Assem. Bill 2108 (2022) 17-18

Other Authorities

State Board Order WR 96-1, *In the Matter of Fishery Protection and Water Right Issues of Lagunitas Creek* (Jan. 18, 1996) 19 fn.18

TABLE OF ABBREVIATIONS AND TERMS

For the convenience of the Court and the reader of this brief, the following table lists abbreviations and defined terms used in this brief. Abbreviations and terms that the parties have jointly agreed to use are marked with an asterisk (*).

ADMINISTRATIVE RECORD	
*CC*nn*	Central Coast Regional Water Board, Administrative Record for Order No. R3-2021-0040 (Augmented)
*SB*nn*	State Water Resources Control Board, Administrative Record for Order WQ 2023-0081
PARTIES	
Regional Board	California Regional Water Quality Control Board, Central Coast Region
*State Board	State Water Resources Control Board
*Water Boards	State Board and Regional Board collectively
*Ag Intervenors	Grower-Shipper Association of Central California, Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties, Western Growers Association, Western Plant Health Association, and California Farm Bureau Federation
Respondents	State Water Resources Control Board and California Regional Water Quality Control Board, Central Coast Region
*San Jerardo Petitioners (or Petitioners)	San Jerardo Cooperative, Inc., Comité De Salinas, Monterey Coastkeeper, Institute for Fisheries Resources, California Sportfishing Protection Alliance, California Coastkeeper, the Otter Project, and Santa Barbara Channelkeeper
TERMS	
*2023 State Board Order	State Water Resources Control Board, Order WQ 2023-0081, In the Matter of Review of General Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R5-2021-0040
Ag Order 1.0	California Regional Water Quality Control Board, Central Coast Region, Order No. RJ-2004-0117, Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands
Ag Order 2.0	California Regional Water Quality Control Board, Central Coast Region, Order No. R3-2012-0011, Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands
Ag Order 3.0	California Regional Water Quality Control Board, Central Coast Region, Order No. R3-2017-0002, Conditional Waiver of Waste

	Discharge Requirements for Discharges from Irrigated Lands
*Ag Order 4.0	General Waste Discharge Requirements from Irrigated Lands Order No. R3-2021-0040
*Antidegradation Policy	State Water Resources Control Board, Resolution 68-16, Statement of Policy with Respect to Maintaining High-quality Waters (1968)
*Basin Plan	Water Quality Control Plan for the Central Coast
*basin plan(s)	Water quality control plans generally
BPTC	Best Practicable Treatment or Control
*ESJ Order	State Water Board Order WQ 2018-0002, In the Matter of Review of Waste Discharge Requirements General Order No. R5-2021-0116 for Growers within the Eastern San Joaquin River Watershed That are Members of the Third-Party Group
*GQMP	Groundwater Quality Management Plans
*INMP	Irrigation and Nutrient Management Plan
MP	Management Practice
MPEP	Management Practice Evaluation Program
*Nonpoint Source Policy	State Water Resources Control Board, Policy for Implementation and Enforcement of the Nonpoint Sources Pollution Control Program (2004)
*Porter-Cologne	Porter-Cologne Water Quality Control Act
SQMP	Surface Water Quality Management Program
TMDL	Total maximum daily load
*TNA	Total Nitrogen Applied
*WDRs	Waste discharge requirements

I. INTRODUCTION

Both opposition briefs make similar errors. They insist that the 2023 State Board Order[1] merely instructed the Regional Board to revise Ag Order 4.0, ignoring that it also directly modified the Order by making its key mechanism unenforceable and dramatically altering the third-party program. This revision required the State Board to issue findings, but the 2023 State Board Order never says that the modified WDRs: (a) will ensure attainment of water quality requirements, (b) contains a valid time schedule, or (c) requires best practicable management and control of the undisputed, decades-long nitrate pollution crisis that plagues communities throughout the Central Coast. Nor does the 2023 State Board Order indicate that the State Board: (d) considered—as the Legislature required—the disproportionate impact of nitrate pollution allowed by the Order on low-income people of color.

Respondents and Ag Intervenors defend the 2023 State Board Order by using the 2018 ESJ Order as a shield, despite this Court's previous determination that the ESJ Order does not precedentially control. The ESJ Order's provisions, moreover, have little relevance given the substantially more detailed record available to the Regional Board and the different regulatory provisions at stake. Respondents adopt strained readings of the text and cite isolated quotes to insist that the ESJ Order prohibits new regulatory approaches, though it does not. Respondents and Intervenors likewise point to features of the ESJ Order that either do not apply to the Central Coast or have been proven ineffective with the benefit of data and experience unavailable in 2018.

No party disputes that for years, growers have measured nitrogen application, planned their application against their crops' expected need, reported nitrogen use, and adopted other practices designed to reduce pollution, yet growers still applied nitrogen at rates that resulted in vast amounts of discharge. Four years of detailed work by the Regional Board's expert staff resulted in a program that required compliance with scientifically backed standards and still accounted for growers' needs by providing time and substantial aid in moving towards sustainability. Yet the State Board chose to remove the enforcement backstop, allowing growers, for an indeterminate length of time, to

[1] Terms displayed on the first mention with a dotted underline are defined in the Table of Abbreviations.

continue to pollute while the State Board re-examines evidence that the Regional Board already evaluated.

The opposition briefs also fail to show that the Regional Board did not abuse its discretion in adopting Ag Order 4.0 without riparian setback requirements. The Regional Board's expert staff told the Board time and again that setbacks were essential to an effective surface water program. To defend its decision, the Regional Board and Ag Intervenors first list the overlapping "elements" of Ag Order 4.0, but they do not provide substantial evidence that those elements are highly likely to attain water quality objectives and protect beneficial uses, as Key Element 2 of the Nonpoint Source Policy and Basin Plan require. And the record shows those elements have significant limitations. Second, purported "concerns" about the consequences, cost, and complexity of riparian setbacks are a distraction—they are legally irrelevant, the Board did not rely on them in its findings, and in any event they were fully vetted over Ag Order 4.0's four-year development.

The petition for a writ of mandate should be granted.

II. ORGANIZATION OF THIS BRIEF

Just as with their Memorandum of Points and Authorities in Support of Petition for Writ of Mandate (Opening Brief or Opening Br.), Petitioners separate this reply brief into two sections: Part III addresses Petitioners' first, second, fourth, and sixth causes of action, asserted against the State Board. Part IV addresses Petitioners' fifth cause of action, asserted against the Regional Board.

III. ARGUMENT: PETITIONERS' CLAIMS AGAINST THE STATE WATER BOARD (FIRST, SECOND, FOURTH, AND SIXTH CAUSES OF ACTION)

A. The 2023 State Board Order Fails to Make Required Findings.

Both oppositions insist that the 2023 State Board Order was not required to make findings because the order was nothing more than a "remand" to revise Ag Order 4.0 to be consistent with the ESJ Order. (See Water Boards' Opposition to Petitioners San Jerardo et al.'s Petition for Writ of Mandate, at pp. 20-22 (Respondents' Br.); Intervenors' Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate, at pp. 13, 23-26 (Intervenors' Br.).) But the 2023 State Board Order directly modified the terms of Ag Order 4.0 and therefore constituted an issuance of modified WDRs. The State Board's action was therefore a manifestation of the authority to take its own action under Water Code section 13320, subdivision (c).[2] As a result, findings were required, the State Board did not make them, and a writ of mandate should therefore issue.

1. The 2023 State Board Order Modified the Terms of Ag Order 4.0.

Respondents and Ag Intervenors argue that the changes to Ag Order 4.0 embodied in the 2023 State Board Order do not constitute an issuance, amendment, or modification of the WDRs.[3] (Respondents' Br. at pp. 20-22; Intervenors' Br. at pp. 23-25.) Yet this Court, in its ruling on Intervenors' Demurrer, determined that the 2023 State Board Order modified Ag Order 4.0:

> The 2023 State Board Order was a review of Ag Order 4.0 that vacated certain portions of Ag Order 4.0 such as the imposition of enforceable limits on nitrogen, while leaving it intact in other respects such as allowing the use of numerical targets for purposes of taking actions short of enforcement. [Citation.] . . . By allowing a modified version of Ag Order 4.0 to issue with respect to controlling discharge of nitrates, the 2023 State Board Order was an "issuance" of WDRs within the meaning of Water Code section 11352, and therefore exempt from the APA.

(Ruling on Submitted Matter – Intervenors' Demurrer (Oct. 16, 2025), at p. 5 (Demurrer Ruling).)[4]

Both oppositions focus on the instructions to the Regional Board to revise the permit, characterizing the 2023 State Board Order as merely a "remand." (Respondents' Br. at p. 20; Intervenors' Br. at pp. 13, 26.) Such instructions do exist, but they are only part of the picture.[5] Neither brief appears to address language directly commanding the Regional Board not to take certain actions: "the Central Coast Water Board shall not take any action related to exceedances of the nitrogen application and nitrogen discharge targets or limits except as specifically authorized by this Order." (SB1369.) This instruction does not rely on a subsequent revision by the Regional

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[2] All further statutory references are to the Water Code unless otherwise indicated.

[3] Respondents appear to acknowledge some amount of change: in carefully couched language, their brief asserts that the State Board "did not make any new *substantive* amendments," "left Ag Order 4.0 *largely* intact," and did not "*majorly* rework" the Regional Board's order. These qualifiers imply that the State Board was aware that it "amend[ed]" and "rework[ed]" the Order at least in part. (Respondents' Br. at pp. 21-22, emphases added.)

[4] Respondents do not acknowledge this ruling at all.

[5] The State Board also insists that "the enforcement provisions Petitioners are focused on were not to become effective until five years after the order was adopted by the Regional Board." (Respondents' Br. at p. 22:21-22.) This is not correct: the application and discharge limits for individual dischargers would have gone into effect at the end of 2023, less than three years after the 2021 adoption of Ag Order 4.0. (CC26, 54-55.)

Board: it changed Ag Order 4.0 with immediate effect.[6] (See Opening Br. at pp. 19-20, 22-24.)

The State Board's command materially altered Ag Order 4.0's requirements and structure at the moment the 2023 State Board Order was adopted in two ways. First, the Regional Board could no longer bring enforcement actions (or impose certain other consequences) for violation of the numeric standards.[7] (SB1349-51.) Second, the 2023 State Board Order transformed the third-party program—with its extended timelines, reduced fees, additional compliance assistance, potential alternative compliance pathways, and reduced monitoring requirements and associated costs—from an incentive program available only to growers in compliance into an entitlement program available to all.[8] (SB1349-52; CC12-13, 18-21, 34-38, 90, 99-100, 111-13, 245-46, 251, 405-06.) As a result, these alterations were not trivial, they significantly changed Ag Order 4.0's scope and effect, and they therefore required findings.[9]

2. Respondents' and Intervenors' Arguments Regarding the State Board's Review Powers Under Section 13320 Ignore Relevant Language.

In further support of their position that the 2023 State Board Order is a remand, not a modification, and that no findings are required, Respondents and Ag Intervenors advance interpretations of the nature and scope of the State Board's review powers that are inconsistent with the text of section 13320 and other governing law.

First, Respondents' analysis of section 13320 places a false dichotomy before the Court in

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[6] As State Board Member Laurel Firestone put it at the adoption hearing, "we are, through this order, in effect taking away the enforcement that[] the Central Coast Board built into their order, and we don't have something else to put in its place." (SB2718.)

[7] The possibility of enforcement was a key feature of Ag Order 4.0 because the Regional Board attributed the failures of previous iterations to their lack of "clear and enforceable requirements (i.e. numeric limits and time schedules)." (CC12, 84-85, 171-72.)

[8] As a result, when Respondents state that the "numeric targets" remained "intact" following the 2023 State Board Order (Respondents' Br. at p. 22), they ignore that the meaning of the term "targets" changed significantly by changing the consequences for violating such "targets" (see SB1349).

[9] Respondents imply that only "extensive" or "substantial[]" changes to a WDR or addition of requirements require findings (Respondents' Br. at p. 22), but the court in *Monterey Coastkeeper v. State Water Resources Control Board* (2018) 28 Cal.App.5th 342 (*Coastkeeper I*) found that the addition of a single sentence formed the "crux of the dispute" and justified a writ of mandate against the State Board. (*Coastkeeper I*, *supra*, 28 Cal.App.5th at 368; see CC32943.) In any event, the changes here were not minor.

accusing Petitioners of "conflating" the power to remand and the power to take actions itself. (Respondents' Br. at p. 21.) The implication is that those powers are mutually exclusive. But the State Board, on review, may do *four* things: take no action, take action itself, remand to the regional board, or "*take any combination of those actions.*" (§ 13320, subd. (c), emphasis added.) Thus, even if some of the 2023 State Board Order is plausibly characterized as a "remand," the order is *also* an expression of the State Board "tak[ing] . . . action itself."[10] When the State Board does act itself—and here, it did act—it is vested with a regional board's authority, and therefore naturally must be subject to the findings requirement that applies to the regional board as well: the findings requirement applies to "the agency which renders the challenged decision." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (*Topanga*).)

Intervenors seek to limit the Court's previous conclusion that the order was an "issuance" under the Administrative Procedure Act (APA) to just the APA. (Intervenors' Br. at p. 24.) But Intervenors do not explain how an act that would qualify as an issuance of WDRs under the APA would then fail to qualify as a prescription of WDRs under Water Code section 13263; what is denoted an "issuance" of WDRs in the Government Code and the "prescrib[ing]" of WDRs in the Water Code both describe the same act, and courts have used the terms "issue" and "prescribe" interchangeably. (E.g., *Los Angeles Waterkeeper v. State Water Resources Control Bd.* (2023) 92 Cal.App.5th 230, 245 ["issued"], 249 ["issue"], 275 ["prescribing"]; *Asociación de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1258, fn. 1 ["issued"], 1263 ["prescribe"] (*AGUA*).)

Both parties also argue that a findings requirement would infringe on the State Board's discretion and somehow require duplicative work. (Intervenors' Br. at p. 24; see also Respondents' Br. at 21.) But WDRs must comply with basin plans and water quality policies, and these policies limit the State Board's discretion. (§§ 13240, 13263, subd. (a); *Coastkeeper I*, *supra*, 28 Cal.App.5th

[10] For this reason, Respondents' assertion that Petitioners' position would subject *any* review under section 13320 to a findings requirement is incorrect. (See Respondents' Br. at p. 21.) Petitioners argue (and the law requires) that only those section 13320 reviews that result *in the State Board taking action itself to modify a WDR* result in a modified WDR and trigger findings requirements.

342, 367.) And as an action subject to review under Code of Civil Procedure section 1094.5, issuance of modified WDRs comes with the requirement to make findings. (§ 13330, subd. (e); *AGUA*, *supra*, 210 Cal.App.4th at 1260.) Intervenors' interpretation would allow the State Board to avoid these requirements by modifying WDRs on review without issuing findings that those modifications complied with governing policies.[11] And when the State Board itself modifies WDRs, as it did here, it must justify the modifications with findings. (*Topanga*, *supra*, 11 Cal.3d at 514.) But this does not mean the State Board and Regional Board are performing identical tasks in duplicate. The State Board must make findings with respect to the modifications that *it* imposed—by definition, the State Board would be the first agency to take that action.[12] If anything, it is Intervenors' and the State Board's position that raises the possibility of absurdity: if the State Board may characterize any action on review as a "remand," it would free itself from the clear findings requirements stated in *AGUA* and *Topanga*. (*AGUA*, *supra*, 210 Cal.App.4th at 1260 [WDRs valid only if regional board "makes certain findings"]; *Environmental Law Foundation v. State Water Resources Control Bd.* (2023) 89 Cal.App.5th 451, 474 ["The Order may comply with the Nonpoint Source Policy . . . if the *State Water Board* made the requisite findings," emphasis added] (*ELF*); *Topanga*, *supra*, 11 Cal.3d at 517 [findings requirement supports policy of "[v]igorous" judicial review].)

3. As a Result of this Modification, the State Board Was Required to Make Findings, but Failed to Do So.

Intervenors argue that the discussion in the 2023 State Board Order constituted sufficient findings. (Intervenors' Br. at pp. 25-26.) Respondents, by contrast, contest that the 2023 State Board Order required any new findings at all. (Respondents' Br. at pp. 20-25.) Neither contention is correct.

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[11] Nor are Intervenors correct that, because they do not include limiting language, the Board's regulations grant it unbounded discretion. (Intervenors' Br. at p. 24; see Cal. Code Regs., tit. 23, § 2052, subd. (a)(2)(B)-(C).) An administrative agency may not by regulation alter or restrict the effect of a statute. (*Wendz v. California Dept. of Education* (2023) 93 Cal.App.5th 607, 625; *Morris v. Williams* (1967) 67 Cal.2d 733, 748.) A regulatory interpretation that excuses the State Board from the statutory requirements attending modification of the WDRs cannot stand. (See *California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 642; *In re Johnny S.* (1995) 40 Cal.App.4th 969, 978.)

[12] It is not sufficient, as both the State Board and Intervenors appear to suggest (see Respondents' Br. at pp. 21-22; Intervenors' Br. at p. 25), simply to claim that the ESJ Order compelled the result. As further discussed below, the ESJ Order does not control here.

Intervenors argue that, to the extent that a findings requirement exists, the 2023 State Board Order fulfilled it. (Intervenors' Br. at p. 25.) But that order did not, as the Opening Brief notes, contain any findings on the Antidegradation Policy, and its "findings" on the Nonpoint Source Policy did not touch on aspects of the order that the State Board modified; the 2023 State Board Order is simply bereft of any findings applying the Nonpoint Source Policy or the Antidegradation Policy to the modified WDRs.[13] (See Opening Br. at pp. 24-25 & fn. 10; SB1354-58; *Topanga*, *supra*, 11 Cal.3d at 516-17 [the "findings requirement serves to conduce the administrative body to draw legally relevant subconclusions supportive of its ultimate decision"].)[14]

Respondents suggest that the State Board need not issue new findings when it relies on the findings that the Regional Board already made. (Respondents' Br. at pp. 24-25.) But this is not correct: the 2023 State Board Order is its own separate agency action that materially weakened the WDRs, and as a result the State Board needed "bridge the analytic gap" to justify its action. (*Topanga*, *supra*, 11 Cal.3d at 515.) If it relied on the same set of facts to reach a different conclusion, it needed to justify that result.[15] Otherwise, there is nothing to demonstrate to the Court that the State Board is not "randomly leap[ing] from evidence to conclusions." (*Id.* at 516.)

4. There Are No Section 13149.2 Findings, but Such Findings Were Required on Issuance of Modified WDRs.

Both opposition briefs rely on the argument that the 2023 State Board Order did not modify

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[13] Respondents argue that the court should not rely on guidance providing that a board should "specifically state" its compliance with the Policy when amending permits to the current situation, but provide no reason why it should not likewise be held to be "instructive" here, as it was so held in *AGUA*. (Respondents' Br. at pp. 24-25; see Opening Br. at p. 25; CC32705.)

[14] Intervenors misread the opening brief to state that Petitioners are arguing that an agency must "make a finding explicitly stating 'why, whether, and how' its decision complies with the law." (Intervenors' Br. at p. 25.) This is incorrect. The Opening Brief states that State Board must find that the modifications to the WDRs complied with the policies and section 13149.2, such that the court and the public need not have to "guess why, whether, and how the State Board believes that the modified WDRs comply with the law." (Opening Br. at p. 25.) These are the "legally relevant subconclusions" required by *Topanga* and the findings required by *AGUA*. (*Topanga*, *supra*, 11 Cal.3d at 516-17; *AGUA*, *supra*, 210 Cal.App.4th at 1260.)

[15] Respondents also argue that the *ELF* court did not require an antidegradation finding in the 2018 ESJ Order. (Respondents' Br. at p. 25.) But the State Board *included* such findings in the ESJ Order, so the issue of whether they were required was not before that court. (See *ELF*, *supra*, 89 Cal.App.5th at 495.)

Ag Order 4.0 and thus no section 13149.2 findings were required. (Respondents' Br. at p. 23; Intervenors' Br. at p. 26.) As discussed above, the 2023 State Board Order made extensive changes to Ag Order 4.0 and thus constituted "issuing" or "reissuing" WDRs within the meaning of section 13149.2, thus triggering the findings requirement. As a result, these arguments fail.

Respondents wish to defer the question of whether the Regional Board must make findings when it revises Ag Order 4.0 in the future. (Respondents' Br. at pp. 23-24.) But this misses the mark: the State Board *has already modified* the WDRs by making the numeric limits unenforceable, and also placed boundaries on the Regional Board's discretion to revise Ag Order 4.0 in the future. The State Board must therefore confront the environmental justice consequences of that decision (a decision which, as discussed below, was not compelled by the ESJ Order). Otherwise, the *Regional Board's* potential findings will only rationalize the *State Board's* decision after the fact.[16] Similarly, it is not at all clear that revising Ag Order 4.0 to conform to the ESJ Order would be exempt from section 13149.2, as Respondents imply: the statute contains no exception for conforming WDRs to prior orders, and facially applies to any issuance of WDRs. (See Respondents' Br. at pp. 23-24, SB1337-38; § 13149.2, subd (c).) Any such revision would still need to include a finding on the environmental justice consequences of making such a revision.

To the extent that there is any ambiguity about whether section 13149.2 applies to this situation, the Court should interpret it "liberally," as a "remedial statute." (See *County of Santa Clara v. Escobar* (2016) 244 Cal.App.4th 555, 574; see also *California Grape & Tree Fruit League v. Industrial Welfare Commission* (1969) 268 Cal.App.2d 692, 698.) The Legislature was explicit in elucidating section 13149.2's remedial scope: in adopting A.B. 2108, the Legislature sought to

[16] For this reason, Petitioners' citation to *Laurel Heights* is apt. Respondents provide no reason for distinguishing CEQA other than that it is a separate statute. But both CEQA and section 13149.2 contain requirements to inform agencies "in deciding whether to" act, not to "inform them of the environmental effects of projects that they have already approved." (Opening Br. at 26; see *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 394 (*Laurel Heights*); § 13149.2, subd. (b) [findings required at time of issuance of WDRs based on information gathered during "public review process"].) As a result, the Supreme Court's discussion in *Laurel Heights* is persuasive that section 13149.2's similar informational requirements would be frustrated if agencies could simply "rationaliz[e]" their actions "*post hoc*." (*Laurel Heights*, *supra*, 47 Cal.3d at 394.)

"address the role racism has played in creating inequities in affordability and access to clean and safe water and in the allocation and protection of water resources." (See Assem. Bill No. 2108 (2021-2022 Reg. Session), § 1, subd. (d) ["the boards' programs were established over a structural framework that perpetuated inequities based on race"].)

B. The 2018 ESJ Order Did Not Precedentially Control the State Board's Modifications to Ag Order 4.0.

In defending the 2023 State Board Order, Respondents rely most heavily on the notion that the 2018 ESJ Order compelled the State Board to eliminate the numeric limits. Not so: the challenged portions of the 2023 State Board were not, in fact, subject to precedential provisions of the ESJ Order. As this Court has previously observed,[17] nothing in the ESJ Order compelled the State Board to modify Ag Order 4.0 in the manner that it did.

1. The State Board's Argument Inverts the ESJ Order's Default Rule that Its Requirements Are Not Precedential Unless Expressly Indicated.

The ESJ Order states that it will affirmatively indicate which provisions are precedential: "because of the significant variation in agricultural practices statewide, *automatic* application of all requirements endorsed in this order to all of the agricultural discharge programs statewide is *inappropriate*." (CC33513, fn. 15, emphases added.) Further, "in the sections that follow, we indicate which of our conclusions have precedential effect." (CC33513.) Respondents' brief tries to

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[17] In ruling on Intervenors' demurrer to the third and seventh causes of action, the Court addressed Intervenors' argument that the language on page 74 of the ESJ Order was precedent that determined the outcome of the State Board's review of Ag Order 4.0. The Court found:

> There are a few problems with this argument. First, the State Board did not designate this passage in the ESJ Order as precedential under section 11425.60. Apparently, Intervenors are asking the Court to take this passage as an undesignated statement of precedent. But there is no authority for the Court to take this liberty. Further, the cited passage does not include any express prohibition on regional boards from placing enforceable limits on nitrogen. And the paragraph is nested within a section providing directions specifically to the Central Valley Regional Board. The Court declines to construe Petitioners' challenge to the 2023 State Board Order as a challenge to the ESJ Order for purposes of determining whether the precedent exemption applies.

(Demurrer Ruling, at p. 7.) The State Board, despite not contesting Petitioners' arguments during the demurrer proceeding, and not acknowledging this ruling in its brief, now disputes the Court's logic.

flip this rule, asserting instead that the rule is that all provisions are precedential unless marked otherwise. (Respondents' Br. at pp. 15-17.) But a court should not defer to an interpretation that "flies in the face of the clear language and purpose of the interpreted provision." (*Coastkeeper I*, *supra*, 28 Cal.App.5th at 370.)

Thus, because section II.A.11 was not designated as precedential, its provisions did not control Ag Order 4.0, despite the Respondents' claims otherwise.[18] (Opening Br. at pp. 31-32; CC33578; cf. Respondents' Br. at pp. 16-17.) If the State Board wanted to designate a portion of the ESJ Order as precedential, it knew how to do so: express language appears throughout the ESJ Order designating particular provisions as precedential, but such language is notably absent for section II.A.11.[19] (Compare, e.g., CC33532 [section II.A.2], 33533 [II.A.3.a], 33536 [II.A.3.b], 33539 [II.A.5.a], 33540 [II.A.5.b], 33544 [II.A.5.c], 33546 [II.A.5.d], 33555 [II.A.5.e.ii], 33557 [II.A.5.f and II.A.6], 33566 [II.A.8.a], 33568 [II.A.8.d], 33570 [II.A.8.e] with CC33577-78 [section II.A.11].) As this Court rightly concluded, the correct interpretation is that section II.A.11 is *not* precedential, given the lack of the express designation as such.

Respondents cherry-pick several quotes, using them out of context to attack this background rule. But each of these fail. Respondents first quote the following statement in the ESJ Order, which

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[18] Other authorities cited by Respondents do not reverse this rule: State Board Order WR 96-1*, In the Matter of Fishery Protection and Water Right Issues of Lagunitas Creek* (Jan. 18, 1996) (*Lagunitas Creek*) states that an order's precedential value ceases "to the extent that a decision or order *indicates otherwise*." (SB1845, fn. 11, emphasis added; see Respondents' Br. at p. 15.) And the ESJ order does so indicate otherwise.

Respondents also refer to Government Code section 11425.60, but this citation does not aid them either. This provision states that a decision may *not* be relied on as precedent unless it is designated as precedent by the agency. (Gov. Code § 11425.60, subds. (a), (b).) This sets a default background rule that a decision is *not* precedential unless an agency affirmatively designates the decision (or a "part of the decision") as such. Section 11425.60 points in the same direction: that the text of an order determines which sections of it are designated as precedential.

[19] Nor do Respondents refute that attorney Wadhwani stated that the ESJ Order was "largely silent" on application limits and that the Regional Board could potentially set such limits based on strong evidentiary findings that high nitrogen applied was "clearly leading to a discharge," which the Regional Board did. (Respondents' Br. at pp. 19-20; CC6158 [audio at 3h15m, Hunt Dec. Ex. 7 at pp. 129-30]; see also CC10230 [audio at 0h41m-0m49m, Hunt Dec., Ex. 9, at pp. 30-32]; CC226-30.) Yet this statement contrasts with the 2023 State Board Order, which firmly barred the mere concept of A limits as a prohibited "new regulatory approach." (SB1349.) This shift is vacillation, and is a further reason for the Court to decline to defer to the State Board's interpretation. (See Opening Br. at p. 34.)

comes immediately after the statement of the not-precedential-unless-noted rule quoted above: "Our precedential direction is intended to guide all irrigated lands regulatory programs, including programs that directly regulate growers as individuals without a third-party intermediary and programs that regulate growers that are members of a third-party intermediary, except where specifically noted."[20] (CC33513; see Respondents' Br. at p. 15, quoting excerpt.) In context, a different, better interpretation harmonizes the text: the "except where specifically noted" clause—rather than contradicting the sentence before it—modifies the immediately preceding clause in the sentence by acknowledging that some irrigated lands are subject to exceptions that remove them from the ESJ Order's precedential orbit entirely.[21] For all other irrigated lands programs, the clearly marked precedential parts of ESJ Order control—but only those precedential parts. [22]

Respondents' next two examples of where similar except-where-noted-style language appears do not help either. (Respondents' Br. at p. 16; CC33531, 33544.) Both occur within specific subsections of section II, each of which discusses various, highly specific facets of the ESJ Order, and not in the generally applicable section I—surprising places to hide an interpretation rule for the whole order. The first example (Respondents' Br. at pp. 15-16; CC33531) quotes a general statement of intent, not a statement of how the order should be interpreted. The second (Respondents' Br. at p. 16; CC33544) in context clearly refers to a set of exceptions listed in the following paragraphs, not to a general rule designating what in the ESJ Order is precedential.[23]

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[20] Confusingly, the Respondents' brief shortens the quote with ellipses, then states the full quote in a footnote, but wrongly cites it as coming from footnote 15 of the ESJ Order. The quoted text actually comes from the ESJ Order's main text. (Respondents' Br. at p. 15, fn. 4; see CC33513.)

[21] These include irrigated pastures and managed wetlands (CC33538, fn. 100), rice farms (CC33537, fn. 92), and others where alternative arrangements are permitted outside of the precedential requirements applicable to all growers (CC33544-45).

[22] Respondents assert that, "where the ESJ Order makes a particular notation that a section is precedential, the specification is an introduction to an area of regional water board discretion." (Respondents' Br. at p. 16.) But this is not universally the case: for example, the requirement to submit grower-specific field-level management-practice implementation data to the regional board is indicated to be precedential, with no accompanying qualifier leaving discretion to the regional board. (CC33536.) The same is true for other requirements. (CC33539-40, 33557.)

[23] Respondents' brief lists three examples where a provision was indicated to be *non*-precedential: the conclusions and recommendations of a surface water expert panel (CC33562); the Surface Water Quality Management Plan (SQMP) and Groundwater Quality Management Plan

Finally, Respondents argue that context, language, and logic demand that subsection II.A.11, though titled "Direction to Central Valley Water Board Regarding Use of Submitted Data," must actually be interpreted as, in effect, "Direction to all regional boards." (Respondents' Br. at pp. 17-18.) This is not a reasonable interpretation of section II.A.11, because all signs point to this section being of a different class than the other ten preceding sections. First, the heading says what it says. Second, the section's text says "we direct the Central Valley Water Board," or "the Central Valley Water Board is directed," or "the Central Valley Water Board shall," or similar language specifically naming the Central Valley Water Board, no fewer than ten times in just under two pages.[24] The Respondents' quotation of the word "statewide" that appears once at the end of section II.A.11 (Respondents' Br. at p. 18) is not sufficient to overcome the clear signs that it is intended to apply to just that regional board.[25]

(GQMP) requirements (CC33572); and the Management Practice Evaluation (MPEP) requirements (CC33568). (Respondents' Br. at p. 16.) In each of these examples, the ESJ Order could have said nothing at all, and the general rule from the order would have applied to make the topic under discussion nonprecedential. The fact that the Board did provide an indicator of nonprecedential value in these locations is welcome as a matter of clarity (especially given that the surrounding subsections all contain indicators of precedent), but it was not required.

Respondents cite several other statements that tell the regional boards what they *can* do with the data, not what they *cannot* do; none of these say that enforceable numeric standards are prohibited. (Respondents' Br. at p. 18; CC33543, 33548, 33555.) Equally unhelpful is the direction that other regional boards "be involved" in the *Central Valley Board's* development of those targets, as other quoted language suggests. (C33548, fn. 124, 33578.)

[24] And section II.A.5.e.ii of the Order notes that section II.A.11 states "direction to the *Central Valley Water Board* on how the submitted data shall be utilized." (CC33554, emphasis added.)

[25] The presence of "statewide" in section II.A.11 is part of an expression of intent and hope for the future, as explained in the Opening Brief. (Opening Br. at pp. 32-33; CC33578.) Such precatory language cannot bind the conduct of an agency. (See *Tomra Pacific Inc. v. Chiang* (2011) 199 Cal.App.4th 463, 491; *In re Marti's Estate* (1900) 132 Cal. 666, 671.) Thus, if the State Board intended to make this language a binding prohibition, it did so for the first time in 2023, and that addition came with the requirement to make new findings.

There are two additional structural reasons why the statement on page 74 of the ESJ Order cannot be read to prohibit "new regulatory approach[es]." (CC33578; SB1349; Respondents' Br. at p. 17.) First, in its discussion of the Antidegradation Policy, the ESJ Order states that irrigated lands programs statewide must continue to "evolve" over time (CC33584)—a sentiment incompatible with a ban on new approaches. Second, as discussed further below, the order makes a key component of its structure—the GQMPs—nonprecedential. (CC33572.) This implies that the State Board intended other regional boards to innovate different regulatory approaches, and did not ban them from doing so. If the State Board had intended every regional board to adopt the same program, it would have made all of the central components precedential. But it didn't.

2. Because the ESJ Order Only Adopted Some of the 2014 Expert Panel's Recommendations, the ESJ Order Needed to Be, and Was, Explicit About Which Terms Were Precedential.

Respondents next argue that the ESJ Order's purpose was to incorporate the Agricultural Expert Panel's recommendations into a statewide program, and that the Expert Panel warned against using the A/R ratio as a regulatory metric. (Respondents' Br. at pp. 17-19.) There are several problems with this argument.

First, only the Water Boards may prescribe WDRs or establish policies. (§§ 13001, 13140, 13223 [authority to prescribe WDRs may not even be delegated to regional board executive officer], 13263, subds. (a), (e), (j).) It is what the State Board chose to put in the ESJ Order and make precedential that governs the matter here, not what the Expert Panel said.

Second, while the ESJ Order adopted "a number" of the Expert Panel's recommendations (CC33513), it did not adopt all of them, did not make all of the recommendations it did adopt precedential, and adopted some requirements not suggested by the Expert Panel.[26] Because the State Board rejected or modified some of the Panel's recommendations, it is not enough to refer to any one recommendation without inquiring whether the ESJ Order actually adopted it as precedential.

And, if the "accuracy of the data" was a concern, as Respondents now suggest (Respondents' Br. at p. 18), the State Board did not raise it in the ESJ Order, which neither mentions that concern nor cites the relevant passage of the Expert Panel's report. (See SB1495.) As a result, there is nothing to support Respondents' suggestion that this concern was the basis for any precedential guidance in the ESJ Order.[27] And because the State Board did not blanket-adopt all of the Expert Panel's

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[26] As examples, the ESJ Order found that the A/R ratio alone—recommended by the Expert Panel—was insufficient because it failed to account for the "magnitude" of nitrogen left in the soil. (CC33543-44 & fn. 111.) As a result, the ESJ Order required reporting and calculation of a new metric instead: A-R, which was not considered by the Expert Panel. (*Ibid.*) Further, the ESJ Order did not fully endorse the Expert Panel's rejection of vulnerability assessments. (CC33530-31.) It altered the Expert Panel's "multi-year" approach into a "multi-cropping-cycle approach." (CC33542, fn. 108.) And it allowed the Central Coast Regional Board to pursue a program where growers were regulated directly by the Board, rather than a third party, as recommended by the Expert Panel. (CC33525, fn. 64, 33555.) It also required anonymous submission of certain data in certain programs, something not discussed by the Expert Panel. (CC33551-56.)

[27] To the extent data quality is a concern, Ag Order 4.0 allayed it by requiring submission of data under signature, with penalties for false submissions. (CC385; see also § 13267, subd. (b)(1)

recommendations, the Court cannot conclude that the State Board approved of this specific recommendation merely because it was included in the Expert Panel Report.

C. The Evidence in the Record Shows That the 2023 State Board Order Failed to Comply with the Law.

Both the State Board and Ag Intervenors now—after the fact—offer reasons why, in their view, the modified WDRs comply with the Nonpoint Source Policy and the Antidegradation Policy. But when an agency is required to make findings, a court may not infer the findings that the agency failed to make. (See *Topanga*, *supra*, 11 Cal.3d at p. 516, fn. 14, 515, fn. 15.) If the Court agrees both that the 2023 State Board Order modified Ag Order 4.0 and that it did not make the required findings in the order itself, it may decide the case on that basis and not reach the arguments regarding compliance with the policies.

Nonetheless, the modified WDRs do not comply with these policies. Though the record contains extensive evidence that previous attempts to control nitrate pollution relied on planning nitrogen fertilizer use, reporting that use, and implementing management practices to control pollution all failed (e.g., CC4-5, 84-85, 123-24, 136-37, 224-27, 6113 [audio at 2h29m, Hunt Dec. Ex. 5, pp. 100-101]), the State Board Order rehabilitates that failed approach while preventing the Regional Board from innovating any new approach (SB1349-51), yet offers no evidence that trying the same approach again would work. This violates each applicable policy.

1. The Modified Order Failed to Comply with the Nonpoint Source Policy.

a. Petitioners Correctly State the Nonpoint Source Policy's Requirements.

Intervenors accuse Petitioners of misconstruing the Nonpoint Source Policy's requirements. (Intervenors' Br., at pp. 26-28.) Actually, Petitioners accurately observe the mandatory nature of the relevant requirements within the Nonpoint Source Policy.

Respondents and Ag Intervenors first argue that Key Element 2's statement that the Regional

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[technical reports to be submitted under penalty of perjury].) Neither Respondents nor Intervenors point to any evidence since 2014 that growers would willingly falsify their submissions. The Regional Board also intended to review the data before the limits were to go into effect, and periodically thereafter. (CC232.)

Board "must be able to determine that there is a high likelihood that the program will attain water quality requirements" (CC32831) is not a requirement at all but rather "nonbinding commentary." (Respondents' Br. at pp. 25-26, 38; Intervenors' Br. at p. 42, citing *ELF*, *supra*, 89 Cal.App.5th at 476.) But focusing on the underlined text, per *ELF*, doesn't help Respondents, as it requires that the management practices and program elements in WDRs "*ensure* attainment" of the program's "stated purposes"—which include "achiev[ing] water quality objectives." (CC5, 32831, emphasis added.) Respondents offer no explanation for how it would be possible to "ensure" the attainment of a program's stated purposes without finding that those stated purposes, including attaining water quality requirements, have a high likelihood of being met.[28] Further, the Nonpoint Source Policy states that a program "must" have a "high likelihood" of success not only in commentary to the Key Elements, but also in the generally applicable text that introduces the list of Key Elements. (CC32830; see *Jones v. Catholic Healthcare West* (2007) 147 Cal.App.4th 300, 307 ["Courts routinely construe . . . words like 'shall' or 'must' as mandatory."].)[29]

Next, Intervenors and Respondents fault Petitioners for "conflating" Key Elements 2 and 3. (Respondents' Br. at p. 25; Intervenors' Br. at pp. 26-28.) But this semantic, technical argument also fails. The "purpose" of the express time schedules and quantifiable milestones requirement is "to assure that the water quality objectives are eventually met." (*Coastkeeper I*, *supra*, 28 Cal.App.5th

[28] And commentary, of course, at a minimum, informs the meaning of the text that it supports. (*Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 304, fn. 7 [it was error for trial court to "discount, if not disregard," nonbinding Judicial Council commentary, because "California courts often look to such commentary for guidance when trying to ascertain the legislative intent behind California statutes"].)

[29] Courts and both Water Boards have repeatedly adopted the "high likelihood" terminology. The *Coastkeeper I* court used "high likelihood" throughout the opinion. (*Coastkeeper I*, *supra*, 28 Cal.App.5th at 349, 367, 370.) The Water Boards, as well as Intervenors, use the "high likelihood" construction themselves: The State Board stated that a water board "must" see that a program has a "high likelihood" of success; similar language appears throughout the ESJ Order. (CC33521; see CC33516, 33526, 33580.) Intervenors, in their brief, also use the term. (Intervenors' Br. at p. 27.) It would be strange for there to be such heavy reliance on a concept that Respondents and Intervenors now argue may be ignored.

The Regional Board also stated the requirement as "high likelihood": seven times in the Ag Order 4.0 findings, the Regional Board discussed whether its program would have a high likelihood of success "*as required by [Nonpoint Source] policy*," and concluded it would. (See, e.g., CC131, 136-37, emphasis added.) The findings also replicate the entirety of Key Element 2, including the commentary—in fact, the high likelihood standard is the only sentence of Key Element 2 that the Regional Board put in bold. (CC126.)

at 370.) Key Element 3, just as with Key Element 2, thus incorporates the requirement that the program must ultimately be successful in reaching those requirements. That the State Board Order's modifications to the WDRs can violate both Key Elements 2 and 3 at the same time and for similar reasons is not a conflation of the two.

b. No Finding of Compliance with Key Element 2's High Likelihood Standard Would Be Supported by the Evidence.

Neither the State Board Order nor Respondents ever state that the modified Ag Order 4.0 ensures attainment of water quality objectives. (See Respondents' Br. at pp. 26-31; SB1349-52, 1354-58.) The evidence shows that it does not: after modification, little remains that has not been tried before and failed. And the ESJ Order is legally irrelevant to the proceeding before this court, while newer evidence shows that its approach is unlikely to work.

i. The Remaining Features of the Modified Ag Order 4.0 Are Insufficient.

Intervenors argue, in essence, that the requirements remaining in Ag Order 4.0 are sufficient to support a high likelihood finding. (Intervenors' Br. at pp. 28-29.) Intervenors, in support of this notion, point generally to a 35-page span of the Order, and accuse Petitioners of singling out the weakening of the numeric standards as a basis for precluding such a finding. (*Ibid.*) But nothing in the State Board Order nor the record shows that what remains of Ag Order 4.0 is sufficient to ensure attainment of water quality objectives. Most of these remaining program features have been present and substantially similar since Ag Order 2.0. (Compare SB2399, CC32945, 34751 [Farm Water Quality Management Plans in Ag Orders 2.0 and 3.0] with CC22-23 [same in Ag Order 4.0]; compare SB2406, CC32961, 34758 [measuring and reporting nitrogen application in Ag Orders 2.0 and 3.0] with CC25-26 [same in Ag Order 4.0]; compare SB2396-405, CC34748-57 [prohibitions on pollution, requirements to implement management practices, and monitoring in Ag Orders 2.0 and 3.0] with CC16-18, 23, 32-34, 45-50 [same in Ag Order 4.0].) When the Regional Board examined the evidence, it found that these requirements were neither reducing nitrogen application nor improving water quality. (CC4-5, 84-85, 123-24, 136-37, 224-27.) On review, the State Board made no findings or pointed to any evidence of its own showing that the Regional Board was incorrect. As a result, there is no evidence that these residual features of Ag Order 4.0 have a high likelihood of working now. (See *AGUA*, *supra*, 210 Cal.App.4th at 1260 ["The wish is not father to the action."].)

Without the numeric limits, not much remaining in Ag Order 4.0 is new and can thus support a Key Element 2 finding in light of the previous Orders' failures. Respondents and Intervenors, pointing to the 2023 State Board Order, suggest that allowing the Regional Board to require growers to certify their INMP and/or submit R data supports a high likelihood finding. (Respondents' Br. at p. 31; Intervenors' Br. at pp. 28-29; SB1350.) But merely collecting information does not itself reduce discharge. Nor would the development and certification of an INMP accomplish this either: the majority of growers have been consulting with "qualified professionals," measuring and planning nitrogen against crop need, using "precision techniques," and reporting application for years—in effect doing what the modified WDRs would require them to do—and yet there is abundant evidence in the record that these practices have not decreased application rates. (CC12792, 12794; see CC224-27, 475, 18972-76, 18991-19004; SB1349-52.) In the absence of enforceable limits that actually require reductions, a grower may check all of these boxes, as they have in the past, and still apply or discharge above the numeric standards, but the Regional Board may not compel them to cease and desist. (See § 13301.) Respondents fail to show that this outcome is inconsistent with a high likelihood of reaching water quality objectives because the evidence shows that unacceptable discharges will continue in the absence of enforcement of the limits.

ii. The ESJ Order's Approach Is Irrelevant.

Respondents defend not the 2023 State Board Order's compliance with Key Element 2, but the ESJ Order's. (Respondents' Br. at pp. 26-31.) But the ESJ Order is not at issue here: Ag Order 4.0 as modified by the 2023 State Board Order is. These are very different programs, and the Nonpoint Source Policy requires that each "program brought before [the State Board] must be individually judged on its merits."[30] (CC32828.) Notably, the ESJ Order, by its own terms, is not a copy-paste template for an irrigated lands regulatory program. It left significant discretion—and

[30] This text appears before the Key Elements and is therefore not subject to the commentary/noncommentary distinction. (CC32828.)

responsibility—to the regional boards to design specific program features.[31]

Respondents cannot therefore rely on the *ELF* court's approval of the ESJ Order's "three-part structure" (Respondents' Br. at p. 27, citing *ELF*, *supra*, 89 Cal.App.5th at 489-90; see Intervenors' Br. at p. 29) as a basis for approving the State Board's modifications to Ag Order 4.0. To start, the ESJ Order's structure is not reproduced in Ag Order 4.0, and was not required to be. As discussed previously, the first part of that structure—planning, implementing, and reporting of management practices and nitrogen use—existed in Ag Orders 2.0 and 3.0 and did not reduce discharge. The *ELF* court lacked the extensive data discussed above, so its treatment of these components was premised on a hypothesis: that improved management practices would drive down nitrate discharge over time, and that the AR data would measure that reduced discharge. (See Opening Br. at pp. 19-22; *ELF*, *supra*, 89 Cal.App.5th at 490.) But the information discussed above has challenged this hypothesis, making *ELF's* conclusion immaterial in evaluating Ag Order 4.0 in light of its much more developed record.

The second part of the ESJ Order's "three part structure," the GQMPs, was also not present in Ag Order 4.0 and, significantly, was undisputedly *not precedential*. Respondents never explain how the ESJ Order's discussion of GQMPs is relevant to this proceeding. (See Respondents' Brief at p. 27; Opening Br. at p. 31; CC33572.)[32] This substantial difference between the ESJ Order and

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[31] The regional boards have discretion in at least the following circumstances: CC33525 [Central Coast Board's direct regulation of growers rather than relying on third party]; 33531 [geographic risk designation and phasing]; 33532 [design of outreach programs]; 33533 [form and frequency of management practice implementation information]; 33536 [how sediment and erosion control practices are documented and reported; 33540 [whether all growers must certify INMP]; 33542 [how to account for nitrogen where multiple crops are grown in a year]; 33544 [how to divide responsibility for developing groundwater protection values]; 33544-45 [prescription of exceptions for categories of growers, including socially disadvantaged growers]; 33546 [development of nitrogen removed coefficients]; 33555 [Central Coast program need not use anonymous reporting; regional boards may require additional data reporting]; 33566 [frequency of drinking water sampling]; 33568 [management practice evaluation program]; and 33572 [SQMPs and GQMPs].

[32] Further, the Regional Board's findings and the evidence discussed above cast doubt on the efficacy of copying the GQMP procedure into a revised Ag Order 4.0. In developing Ag Order 4.0, the Regional Board found that "management practice implementation, assessment, and improvement" has "not to-date resulted in measurable progress towards achieving water quality objectives." It therefore found that "a new order that relies the same approach would not have a high likelihood of success." (CC136.) Yet the GQMPs rely on exactly this process. The State Board does not dispute these findings, nor the evidence underlying them. Yet while its brief states that the State

Ag Order 4.0 additionally undermines Intervenors' assertion that the *ELF* decision preapproved the modifications to Ag Order 4.0 by upholding "substantially similar program elements," including "targets instead of enforceable limits." (Intervenors' Br. at p. 29, discussing *ELF*, *supra*, 89 Cal.App.5th 489-91.) First, the cited passage of *ELF* contains no such discussion of targets. Second, the ESJ Order relied on a program element—the GQMPs, which are not at all similar to Ag Order 4.0's numeric standards—as the "primary vehicles" for moving towards compliance. (CC33571.) *ELF's* discussion, and both opposition briefs' reliance on it, is therefore off point: Ag Order 4.0 was a different order with a much different record, and neither *ELF* nor the "three-part" structure of the ESJ Order controls here.[33]

iii. The Remaining Key Element 2 Arguments Lack Merit.

Respondents and Intervenors make two final arguments regarding Key Element 2 that are both unavailing. First, Intervenors assert that the numeric standards were invalidated for "scientific" as well as "precedential" reasons—the purported lack of uniform data stemming from Ag Order 4.0's calculation of compliance pathways and use of discount factors.[34] (Intervenors' Br. at p. 29; SB1345-50, see also Respondents' Br. at pp. 6, 13, 15; SB 1346-49.) There is no basis for such a claim. Both the ESJ Order and the unmodified Ag Order 4.0 required reporting of substantially identical data—for instance, nitrogen applied via fertilizer, compost, and irrigation water, residual soil nitrogen, and crop yield. (Compare CC386-96 with CC33726-31.) The data sets required to be

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Board did not "even direct how the" Regional Board was to revise its WDRs, it also purported to ban any "new regulatory approach" not contemplated in the ESJ Order. (Respondents' Br. at p. 22; SB1349.) Mandating adoption of GQMPs would therefore force the Regional Board to act contrary to its findings, without the State Board ever explaining why those findings were wrong.

[33] Respondents acknowledge Petitioners' argument that the Regional Board "had experience and knowledge in developing Ag Order 4.0 that the State Board did not have in preparing the ESJ Order." (Respondents' Br. at p. 28; see Opening Br. at p. 21.) But in response, they cite nothing in the 2023 State Board Order to support the wholesale dismissal of this experience and knowledge. Instead, Respondents invoke the Expert Panel Report from *2014*, which reviewed and recommended rejecting a previous, substantially different regulatory scheme. It is unclear how this reference to a report that predated most of the "experience and knowledge" identified by Petitioners is relevant at all, let alone demonstrates that it supports rejecting Petitioners' evidence.

[34] In fact, the State Board remanded because of the purported violation of the ESJ Order's precedent—which is demonstrated by the prohibition on the Regional Board's enforcement of any numeric standards even if recalculated. (SB1349-52.)

collected under either order are fully comparable (see CC163-64), and it defies reason to claim that one is acceptable but the other is scientifically suspect. The discount factors and compliance pathways that so concerned the State Board are calculated *after* the raw data is reported.[35] (CC26-28, 387-89.) As a result, the worry that Ag Order 4.0 will generate inconsistent data is not based on substantial evidence in the record.

Last, both Respondents and Intervenors point to evidence purporting to cast doubt on the efficacy of the numeric standards.[36] (Respondents' Br. at pp. 29-31; Intervenors' Br. at pp. 35-37.) But this evidence is unconvincing, and other evidence shows the numeric standards could have achieved their objectives—and none of it shows that the modified WDRs would ensure attainment. Sarah Lopez, director of a grower third-party program (SB2580), focused on certain disadvantaged growers that were having difficulty reporting data. (Respondents' Br. at p. 30.) At the outset, Respondents do not acknowledge that Ms. Lopez and her organization *did not oppose* the enforceable numeric limits, and indeed acknowledged "a scientific basis for that A and R data" as "management tools" and a need for "a regulatory process that can be enforced."[37] (SB2583-84,

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[35] Further, the specific calculations underlying the formulas and discount values, which the State Board largely does not dispute, were developed "in response to written and oral comments and associated scientific justification provided by various experts, including U.S. Department of Agriculture (USDA), University of California Cooperative Extension (UCCE) researchers, and agricultural industry service providers" and were suggested by agricultural interests. (SB1078.)

[36] As a threshold matter, Respondents characterize some of this evidence as "[n]ew" and refer to proceedings before the State Board. (Respondents' Br. at pp. 29-31; SB2526, 2540, 2582-94, 2650-53.) State Board regulations strictly constrain submission of evidence to the State Board, and they and require persons seeking to introduce such evidence to submit a written request making a detailed showing. (Cal. Code Regs., tit. 23, § 2050.5, subd. (a).) The "new" evidence cited in the State Board's brief was not accompanied by a request to submit supplemental evidence. (See SB2495 [summarizing submissions to State Board].) As a result, this Court should disregard this "new" evidence as improperly submitted to the State Board.

Petitioners acknowledge that they submitted a request for supplemental evidence of their own, which the State Board rejected (SB1336, fn. 10), a decision which this Court upheld. (Ruling on Submitted Matter – Petitioners' Motion to Augment the Administrative Record (October 28, 2025), at pp. 5-6.) The State Board should not be permitted to rely on evidence that was subject to but did not comply with the supplemental-evidence procedures, while at the same time excluding evidence that Petitioners submitted in good-faith adherence to those procedures.

[37] The Regional Board, in a comment letter, noted that Ms. Lopez's organization had "embraced the nitrogen applied and nitrogen removed terms and discount factors, along with the A-R difference methodology," and proposed that methodology for developing the workplan for an alternative compliance pathway. (SB1078.)

2590.) As to the specific issue with disadvantaged growers' reporting difficulties, Ag Order 4.0 shows the Regional Board was aware of and anticipated it: the Regional Board created a category of "Limited Resource Farmers" and specifically provided for flexibility in reporting and meeting timelines for those growers. (CC11; see also CC33544-45 [ESJ Order's exceptions for disadvantaged growers]). To the extent that non-disadvantaged growers may have trouble with the technical requirements of the Order, the purpose of the third-party program is to assist growers in preparing these reports. (CC6113 [audio at 1h35m, Hunt Dec. Ex. 5, at p. 64].) Further, the program is not intended to be overly punitive: it is Water Board policy to begin with assistance and training before proceeding to formal enforcement, especially for disadvantaged dischargers. (CC33460-63, 33492-93.) And, the Regional Board included periodic "check-ins" as Ag Order 4.0's numeric standards went into effect to assess data and account for exactly these types of concerns.[38] (CC232.) Last, this discussion of disadvantaged farmers says nothing about the great number of growers who are not disadvantaged, but who nonetheless have contributed to the ongoing nitrogen pollution in the Central Coast.[39]

Next, Respondents refer to industry consultant Lowell Zelinski, whose presentation largely tracked the points made in the 2023 State Board Order. (Respondents' Br. at p. 29; SB1320, 2649-54.) However, even Dr. Zelinski acknowledged that the application standards were "reasonable numbers." (SB2652.) And nothing in his testimony contradicts Regional Board staff testimony in the record that showed existing high levels of fertilizer application that far exceeded industry- and academic-recommended values and determined that application at such rates constituted a discharge. (CC224-30, 10230 [audio at 0h41m-0m49m, Hunt Dec., Ex. 9, at pp. 30-32], 38096.) Respondents also mischaracterize Dr. Zelinski's testimony in implying that his comments regarding consistency of the data were a criticism of the features of Ag Order 4.0 at issue here. (Respondents' Br. at p. 29.) In context, these comments referred to the use of the A/R ratio in Ag Order 4.0, an

[38] This check-in procedure also addresses concerns cited by Dr. Karen Lowell, cited by Intervenors, that the A-R formula was insufficiently sophisticated: there would have been opportunity to refine the metrics over time. (Intervenors' Br. at pp. 35-26, CC9496-99.)

[39] Further, Ms. Lopez's comments on the diversified nature of vegetable farming focused on the "smallest of the small" operations and disadvantaged growers (SB2591), but Respondents' brief appears to inappropriately extend her analysis to all vegetable crops (Respondents' Br. at p. 30).

aspect of the Order not at issue here. (SB2651-52, 1322.) Last, while Dr. Zelinski said that there is insufficient data to convene an expert panel, he also seemed to acknowledge that there is sufficient data for certain crops, primarily vegetables—but the bulk of the acreage and of nitrate discharge in the Central Coast is from vegetable crops.[40] (CC226, 230, 18997; SB2651-52, 2582.) It is therefore appropriate for the program to target vegetable crops, and, because every pollution control program must be judged on its own merits (CC32828), the Nonpoint Source Policy does not condone waiting for other areas of the state to collect further data before allowing the Regional Board to regulate known discharges in the Central Coast.

By contrast, other evidence in the record demonstrated that the numeric standards would be highly likely to achieve water quality objectives. Matt Keeling, Executive Officer of the Regional Board, described the application standards as "statistically and agronomically defensible." (SB2515; see *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 900 [opinion of agency staff constitutes substantial evidence].) Mr. Keeling also discussed the extensive consideration that the Regional Board gave to the substantial evidence supporting the numeric limits.[41] (SB2519.)

The Regional Board itself also considered extensive information and data since the adoption of the ESJ Order. (SB2520.) In comments, the Regional Board wrote to the State Board that it remained "confident in the value of the methods, metrics, and calculations" underlying Ag Order 4.0. (SB1077.) USDA scientist Dr. Eric Brennan opined that while industry concerns about regulation were to be expected, Ag Order 4.0's discharge limits provided farmers a "rational, numeric framework" to "receive incentives . . . [to] reduce nitrogen discharge," and stated that the A and R metric is "easily understood by the agricultural industry," "accurately credits numeric incentives for best management practices," and "is critical to improving ground water quality. . . ."

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[40] Respondents incorrectly cite page SB2652 for this proposition, but Dr. Zelinski's comment is on page SB2651.

[41] This evidence included "decades of water quality data," "nitrogen applied data collected since 2014 indicating no appreciable decrease in nitrogen application rates since that time, peer reviewed scientific studies and articles, written testimony and countless hours of verbal testimony received from growers, agricultural service providers and associations, agricultural researchers, community members, environmental and environmental justice advocates during four years of agricultural order-related meetings, workshops, and hearings." (SB2519.)

(SB1150-51; see also SB2635-39.)

c. No Finding of Compliance with Key Element 3's Adequate-Time-Schedules Requirement Would Be Supported by the Evidence.

Respondents argue that an indefinite pause on enforcement does not violate Key Element 3, and that the Board is acting as expeditiously as possible in any event. (Respondents' Br. at pp. 32-34.) Intervenors argue that Petitioners misstated the requirements of Key Element 3 (discussed above), and that any future direction to develop guidance will be subject to the State Board's discretion. (Intervenors' Br. at pp. 29-34.) These arguments lack merit.

First, the time schedules remaining in the modified WDRs are illusory because they do not actually require adherence to them and thus cannot satisfy Key Element 3's requirement that a Nonpoint Source Policy program must include a "specific" time schedule and milestones that progress toward "reaching" requirements. (CC32832.) The schedule must "assure that the water quality objectives are eventually met," yet there is no such assurance here. (*Coastkeeper I*, *supra*, 28 Cal.App.5th at 369.) Removing enforceable limits thus has the effect of "negat[ing]" the time schedules, as Intervenors acknowledge. (Intervenors' Br. at p. 30.)[42] Without the potential for meaningful consequences, as discussed above, growers may now decline to comply with the remaining requirements without being subject to enforcement mechanisms found necessary by the Regional Board to ensure compliance. (CC85, 129, 136-37.)

That members of the State Board acknowledged a sense of urgency (Respondents' Br. at p. 33) is largely irrelevant if the 2023 State Board Order, as actually adopted, is missing a component clearly required by the Nonpoint Source Policy. (*Coastkeeper I*, *supra*, 28 Cal.App.5th at 369 ["conscientious effort" is insufficient to satisfy the Nonpoint Source Policy].) Even if the State Board is correct that the numeric standards were flawed, the process to replace or revise them must be on a specific timeline: if not, then a board could always escape the timeline requirement by claiming that it needs more information. (CC32832.) Respondents assert that the State Board

[42] In fact, removing the numeric limits negates not just the time schedules but also the Regional Board's original definition of how compliance with Ag Order 4.0 would be measured: "Compliance with this Order will be determined based on achieving the numeric limits, rather than on quantifying the number or type of management practices implemented." (CC137.)

"carefully outlined a timeline," but they point to no deadlines or milestones (Respondents' Br. at p. 34); Key Element 3 requires that in the event that "it is necessary to allow time," the program "shall include a *specific time schedule*" for which events like convening an expert panel must occur—even if these schedules must be adjusted later.[43] (*Ibid.*, emphasis added.) Respondents further claim that *Coastkeeper I* approved of "deferring standards to wait for the proper data review and expert panel recommendation" (Respondents' Br. at p. 33), but the modified waiver at issue in that case *had* time schedules for certain dischargers to "effectively control waste discharges of . . . nitrates"—and significantly, the modification to the definition of compliance rendered those schedules meaningless (*Coastkeeper I, supra*, 28 Cal.App.5th at 369-70). A similar situation exists here: while a schedule ostensibly exists, by not compelling compliance, the schedule does not "assure that the water quality objectives are eventually met." (*Id.* at 369.)

Nor does Respondents' reference to *Coastkeeper I*'s seemingly approving language toward expert panels (Respondents' Br. at p. 34; see *Coastkeeper I*, *supra*, 28 Cal.App.5th at 366) alter this conclusion.[44] The State Board Order prohibits any regional board from adopting a "new regulatory approach" for nitrate pollution until three things occur: the State Board determines that enough data exists to convene an expert panel, the expert panel meets and makes recommendations for "significant revisions" to agricultural WDRs, and the State Board takes some unspecified action based on those recommendations.[45] (SB1352-53, 1357.) The Respondents' brief characterizes this

[43] Respondents, in attempting to justify the lack of specific deadlines and milestones, also conflate the timeframe for the initial development of a program (which took place in 2004), with the timeline for achieving that program's goals once adopted. (Respondents' Br. at p. 32, citing CC32835.) It is the latter—for the fourth iteration of this program—that is at issue in this case.

[44] The specific issue that the *Coastkeeper I* court approved deferral of—the structure of the monitoring program—is a question that was indisputably within the Boards' discretion. (*Coastkeeper I*, *supra*, 28 Cal.App.5th at 366.) Where the State Board failed to comply with a mandatory component of the Nonpoint Source Policy, though, the court appropriately held that the State Board violated the policy. (*Id.* at 369-70.) Respondents' discussion on this point is therefore off-point.

[45] Respondents place weight on State Board members' exhortations to move quickly. (Respondents' Br. at pp. 32-33.) But the record sows doubt on the Board's ability or inclination to do so. Dr. Lowell Zelinski, cited by Respondents in their brief, testified that there was insufficient evidence to convene the Expert Panel. (SB 2651; Respondents' Br. at p. 29.) In the ESJ proceeding, the Expert Panel met in 2014, and yet it took four more years for the State Board to act. (SB1449; CC33585.) And the Regional Board identified the stakes of delay: "10 years of delay in loading

delay as merely seeking further expert input. The 2023 State Board Order is clear, however, that regulatory innovation is at a standstill until these steps occur, yet it offers no timeline for them to occur, or assurance that they will occur at all. (See Respondents' Br at pp. 32-33; Intervenors' Br. at pp. 31-32.) Meanwhile, the modified WDRs, which do not allow the Regional Board to compel compliance with the time schedules, remains in effect with no expiration date.

As Petitioners argued in their Opening Brief, adding new procedural requirements before any "new regulatory approach" may be adopted is a "de facto" modification of the Nonpoint Source because it interposes a new procedural requirement before a regional board may adopt any innovation outside of the ESJ Order's provisions.[46] (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 732.) Opposing parties do not cite any statute, regulation, or policy that requires an expert panel to meet before a Water Board may take regulatory action.[47]

Finally, Intervenors point to *Monterey Coastkeeper v. Central Coast Regional Water Quality Control Board* (2022) 76 Cal.App.5th 1 (*Coastkeeper II*) to insist that the Board's task to "develop further ILRP guidance" is entirely discretionary and not subject to mandamus review. (Intervenors' Br. at pp. 31-32.) This is inapposite, and it illustrates the need for the Court to act now: *Coastkeeper II* held that judicial review may not be available to enforce discretionary acts of the Board; courts will review only administrative decisions. (*Coastkeeper II*, *supra*, 76 Cal.App.5th at 20.) But the *Coastkeeper II* court was careful to distinguish a situation where an agency was required to act, but did not, from the situation where there was a challenge to the "sufficiency" of actions that *were* taken. (*Ibid.*) Only in the latter scenario is judicial review unavailable. Here, the State Board was required by the Nonpoint Source Policy to include features in its order that it failed to include.

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reductions will result in significantly more than 10 years of delay in the groundwater cleanup timeframe . . . ." (CC245.) Respondents, moreover, never explain why the evidence in the Regional Board's record is insufficient: the Regional Board heard from a greater number and variety of stakeholders and experts than the 2014 Expert Panel was composed of, and it is entirely unclear why that evidence is not credited while communities must wait for a separate body to act. (Opening Br. at pp. 20-21.)

[46] Finally, neither Respondents nor Interveners respond to Petitioners' argument that the State Board's amending of the Nonpoint Source Policy violates subdivision (b) of section 13149.2.

[47] Respondents insist that the data is in the "collection phase" but identify no standard or deadline to determine when this phase ends. (Respondents' Br. at p. 29.) This is another example of the State Board's failure to set "specific" timelines with "quantifiable milestones." (CC32832.)

Judicial intervention is available to correct this failure. (See *Coastkeeper I*, *supra*, 28 Cal.App.5th at 367-70, 372.) WDRs do not expire, so it is not clear if another opportunity for judicial review will *ever* recur if this court does not require an order supported by adequate Nonpoint Source Policy findings and evidence.

2. The Modified Order Failed to Comply with the Antidegradation Policy.

With respect to compliance with the Antidegradation Policy, Respondents, again, accuse Petitioners of attempting to relitigate the *ELF* case. (Respondents' Br. at p. 34.) Not so: Petitioners raise no challenge to *ELF* nor to the ESJ Order in this case. Still, Respondents' reliance on *ELF* as a justification for its current actions is misplaced. In the ESJ proceeding, as discussed above, the State Board actually made antidegradation findings. (*ELF*, *supra*, 89 Cal.App.5th at 495.) Here, by contrast, the State Board modified Ag Order 4.0 but made *no antidegradation findings at all*.[48] This, alone, demonstrates a violation of the Policy. (*AGUA*, *supra*, 210 Cal.App.4th at 1260.)

And for many of the same reasons that Respondents cannot rely on the ESJ Order's structure to defend the modifications to Ag Order 4.0 as valid under the Nonpoint Source Policy, Respondents cannot rely on that structure to defend against claims of violation of the Antidegradation Policy. (Respondents' Br. at pp. 35-36.) As demonstrated above, the ESJ Order's structure that Respondents rely on is not present in the modified Ag Order 4.0: there are no mandatory GQMPs and there is no MPEP. Thus, the evidentiary basis for a finding that it will assure that pollution and nuisance will not occur is not present. Respondents do not refute this. (*Id.* at p. 36; see *ante* at pp. 26-28.)

Respondents quote *AGUA* to state that a "discharge will be required" to undergo BPTC, and then stretch that point to go well beyond *AGUA* to argue that BPTC applies to a "discharge," not to a regulatory program. (Respondents' Br. at p. 36.) This argument fails upon simple examination of the Antidegradation Policy itself. That Policy states that a discharge "will be required to meet waste discharge requirements which will *result*" in BPTC. (CC32680, emphasis added.) That is, WDRs

[48] Curiously, Respondents extensively quote the Regional Board's maximum benefit finding, including the finding that Ag Order 4.0 required "dischargers to meet receiving water limitations . . . in accordance with time schedules . . . ." (Respondents' Br. at p. 35; see CC148-49.) But the State Board modified this finding by no longer requiring growers to meet the time schedules, thus pulling the rug out from under the entire structure.

must *result* in BPTC. But the "negating" of the numeric limits calls into question whether any of the remaining requirements will, in fact, "result" in treatment and control that represents the industry's actual best efforts. (See Intervenors' Br. at p. 30.)

Intervenors, meanwhile, advance an argument that the requirements of Ag Order 4.0 cannot be BPTC because they are too *strict.* (Intervenors' Br. at pp. 35-38 ["nitrogen limits are not practicable, and therefore not BPTC"].) This argument can be disposed of on both legal and evidentiary grounds. First, Ag Intervenors appear to argue that the Antidegradation Policy prohibits any regulation that goes beyond what is currently practicable. (*Id.* at pp. 38-39.) But this is not the correct interpretation of the Policy, which requires that WDRs meet BPTC "necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained." (CC32680.) The language quoted here is significant: BPTC is not concerned with what conduct the agricultural interests regulated by an order believe is practicable; it is instead concerned with what conduct is "necessary to assure" that pollution or nuisance will not occur and highest water quality will be maintained. Nothing in this language suggests that BPTC is a ceiling capped by what is practicable for most growers in the region (Intervenors' Br. at p. 35), or that WDRs may require no higher level of control. Rather, BPTC sets the *floor* for the level of control allowed. And indeed, higher levels of control must be permissible, because the Antidegradation Policy, as well as Porter-Cologne itself, also require achievement of water quality objectives, which may require higher levels of control. Porter-Cologne also permits the Water Boards to prohibit certain discharges outright. (§ 13243.)

Leaving aside that Intervenors' argument misstates the Antidegradation Policy's requirements, Ag Order 4.0's time schedules were practicable: 85% of growers, with no changes to their operations, met the application standards in 2019. (CC230.) Eighty-three percent of growers met the initial discharge standards, and 58% of participating growers met the standard that would have gone into effect in 2030; significant minorities of growers could even meet the final limit, despite compliance not being required for decades. (CC57, 231.) This evidence calls into question Intervenors' reliance on Dr. Michael Cahn's testimony: compliance is practicable now, and doesn't rely on speculation about the future. (Intervenors' Br. at pp. 35, 37-38; CC9489-92.) Further, the

Regional Board intended to ameliorate similar concerns by reviewing data and compliance, and considering revisions before the limits initially go into effect and each time they step down. (CC232.). The remaining evidence that Intervenors cite demonstrates that the limits will come with costs, and may have uncertainties associated with them. (Intervenors' Br. at pp. 35-38.) But all regulatory programs do. The question is whether Ag Order 4.0's approach was the best available; the data shows it was.[49]

IV. ARGUMENT: PETITIONERS' CLAIM AGAINST REGIONAL WATER BOARD (FIFTH CAUSE OF ACTION)

In their opposition briefs, the Regional Board and Ag Intervenors defend the Board's decision to adopt Ag Order 4.0 without riparian setbacks on two grounds. First, they argue that Ag Order 4.0's surface water management program includes "many elements" and "collective . . . provisions" that will adequately protect surface water even without riparian setbacks. (Respondents' Br. at pp. 38-40; Intervenors' Br. at pp. 42-45.) But, as explained more fully below, a mere list of practices coupled with a bare assertion that they will work is not substantial evidence of compliance with Key Element 2. And indeed, the evidence strongly suggests that the surface water program without riparian setback requirements, even viewed broadly, will not have a high likelihood of attaining water quality objectives and reasonably protecting beneficial uses.[50] The Regional Board's expert staff told the Board as much: "These requirements are necessary to meet water quality objectives and protect beneficial uses. Even if we had all of the other components of this order in place . . . we still could not be protective of beneficial uses like aquatic life protection and wildlife habitat and many others." (CC10231 [audio at 4h39m, Hunt Dec. Ex. 11 at p. 8].)[51]

[49] Last, neither Respondents nor Ag Intervenors refute that new evidence was available to the Regional Board that bears on what level of control is BPTC (and also what quality of water is consistent with maximum benefit to the people of the state): numeric limits in the European Union reduced nitrate groundwater concentrations (CC233-34); development of coefficients makes using A-R feasible (CC29, 164-65, 420, 32129-44); and evidence that previous iterations of the program, which closely mirror the ESJ Order, did not result in reduced application, and therefore showed that a more quantifiable and enforceable approach was needed.

[50] As discussed *ante*, the Water Boards' and Ag Intervenors are incorrect that the "high likelihood" standard is nonbinding commentary. (See *ante* at pp. 23-24.)

[51] The San Jerardo Petitioners agree with the Regional Board that, as a matter of law, regional

Second, the Regional Board and Ag Intervenors argue that various purported concerns with riparian setbacks justified the Board's decision to adopt Ag Order 4.0 without them. (Respondents' Br. at pp. 41-42; Intervenors' Br. at pp. 39-41.) However, as explained more fully below, Ag Order 4.0 must satisfy Key Element 2 regardless of any concerns about "complexity, legality, and economic burden." (CC16583, 32831.) Moreover, such concerns were thoroughly addressed by the Board's expert staff. (See, e.g., CC5891-93, 6634-35, 6585-87, 7136-37, 7138-42, 7144-46.)

Ag Intervenors alone make a third argument: that the riparian setbacks staff proposed in the Draft Ag Order 4.0 unlawfully dictated the manner of compliance in violation of Water Code section 13360. (Intervenors' Br. at pp. 45-48.) Respondents respond that this argument is both unripe for review and meritless. (Respondents' Sur-Reply at pp. 2-8.) The San Jerardo Petitioners join in and elaborate on Respondents' arguments below.

A. Without Riparian Setbacks, Ag Order 4.0 Does Not Adequately Protect Surface Water or Beneficial Uses.

In their opposition briefs, the Board and Ag Intervenors argue that Ag Order 4.0's surface water program, taken broadly, satisfies Key Element 2 even without riparian setbacks. (Respondents' Br. at p. 38 ["When viewed together, many elements of Ag Order 4.0 work together to implement Key Element 2 and protect water quality objectives."]; Intervenors' Br. at p. 42 ("[T]he collective surface water provisions in Ag Order 4.0 support the Regional Board's findings."].)

But to satisfy Key Element 2 of the Nonpoint Source Policy, the Regional Board must show that Ag Order 4.0 has a high likelihood of attaining the Basin Plan's water quality objectives and reasonably protecting its 23 beneficial uses for inland surface waters. (Opening Br. at p. 35; CC32831, 34089-94, 34067-69.) Throughout Ag Order 4.0's development, Board staff were clear that this obligation required robust riparian-area management practices, most notably setbacks.[52]

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boards have the authority to protect beneficial uses. (See Respondents' Sur-Reply to Intervenors' Opposition, at pp. 8-9 (Respondents' Sur-Reply), citing Intervenors' Br. at p. 18.)

[52] (See, e.g., CC10231 [audio at 4h39m, Hunt Dec. Ex. 11 at p. 8] ["Even if we had all of the other components of this order in place . . . we still could not be protective of beneficial uses . . . ."]; CC10230 [audio at 2h50m, Hunt Dec. Ex. 10 at pp. 24-25] ["But in the absence of riparian vegetation, you are not protecting aquatic life beneficial uses."]; see *Oakland Heritage Alliance*, *supra*, 195 Cal.App.4th at 900 [opinion of agency staff constitutes substantial evidence].)

And, despite the Board's decision to remove riparian setbacks from the final Ag Order 4.0, the Order's findings do not contradict the fact that riparian setbacks were necessary for Ag Order 4.0 to adequately protect surface water quality and beneficial uses.[53]

The Board points to various "elements" of the surface water program. These include management plans for certain pollutants, reporting on current riparian areas, and surface water receiving limits. (Respondents' Br. at p. 39.) The Board also highlights, despite its recognized inadequacy since Ag Order 2.0, the continued prohibition on removing or degrading "existing naturally occurring, and established native riparian vegetative cover," with exceptions, and required minimization of discharges when riparian areas are disturbed. (*Ibid*.). Ag Intervenors lean on several other management practices: "those related to controlling sediment, erosion, irrigation runoff, stormwater runoff, road runoff, agricultural drainage pump management, and impermeable surface management practices." (Intervenors' Br. at p. 43).

The Board and Ag Intervenors' argument—that Ag Order 4.0's surface water program will protect surface water quality without riparian setbacks—is, in essence, a list. But a list is not substantial evidence. Under *AGUA*, an agency must do more than recite goals or assume causal relationships; it instead must support its decision with substantial record evidence and reasoned analysis connecting the facts to the law. (*AGUA*, *supra*, 210 Cal.App.4th at pp. 1267, 1280-81.)

In *AGUA*, the Court held that a regional board's invocation of its broad statutory authority and water quality goals—and even its adoption of prohibitions on pollution—cannot, standing alone, satisfy the requirement that specific regulatory conditions be grounded in the record. (*AGUA*, *supra*, 210 Cal.App.4th at pp. 1280-81; see also *id.* at p. 1280 [describing this type of reasoning as "circular"].) Here, the Regional Board makes the same error—it strings together the stated objectives of Ag Order 4.0 and its Basin Plan authority; recites the Order's prohibitions on disturbing riparian vegetation, surface receiving water limits, and other "elements"; and then asserts that the

[53] The Board avers that "[t]here were no findings made by the Regional Board on the record concerning the riparian area management requirements, including riparian setbacks." (Respondents' Sur-Reply at p. 6; see also *id.* at p. 4.) However, while it is true that the Regional Board did not make findings to justify the absence of riparian setbacks, it did make numerous findings on the exceptional value of riparian areas for protecting surface water quality and beneficial uses. (See Opening Br. at p. 43, citing CC160, 284-304.)

latter are sufficient to meet the former. But simply restating what the Order is trying to achieve, and even how the Order plans to achieve it, is not *evidence* that Ag Order 4.0 will fulfill its obligation to satisfy the Nonpoint Source Policy and "implement" the Basin Plan. (§ 13263; CC34089-94; see also *AGUA*, *supra*, 210 Cal.App.4th at p. 1261 ["The wish is not father to the action."].)[54]

Moreover, the specific "elements" of Ag Order 4.0's surface water program to which the Board and Ag Intervenors point are woefully inadequate to achieve surface water quality objectives and protect beneficial uses, even "[w]hen viewed together." (Respondents' Br. at p. 38.)

Surface water receiving limits. The Board highlights that Ag Order 4.0 includes surface receiving water limits for pesticides, toxicity, sediment, and turbidity. (Respondents' Br. at pp. 38-40.) But again, "the wish is not father to the action"; the Board must *show* that these limits will be met, are in fact capable of being met, and will protect beneficial uses by achieving water quality objectives. (*AGUA*, *supra*, 210 Cal.App.4th at p. 1261; see also CC34089-94, 34067-69.)

There are no findings accompanying Ag Order 4.0, and no substantial record evidence showing, that growers will meet these numeric limits or even that they are capable of being met. To the contrary, the Board itself has conceded the point. In Ag Order 4.0's findings, the Board acknowledges that "[c]urrent 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," and that compliance instead depends on future "research, testing, and advancement of new or improved management practices." (CC157.) That is a direct admission that Ag Order 4.0's practices may not attain the Order's numeric limits.[55]

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[54] The Board and Ag Intervenors lean heavily on *ELF*, which upheld a materially similar program against a Key Element 2 challenge. (Intervenors' Br. at p. 45, citing *ELF*, *supra*, 89 Cal.App.5th at pp. 488-89.) But *ELF* turned on the presence of substantial evidence: the court sustained a high-likelihood finding only because the record supported it. (*ELF*, *supra*, 89 Cal.App.5th at pp. 489-90.) Here, the record points the other way. The Board's own findings concede that fifteen years of the same management-practice approach have "not to-date resulted in measurable progress" toward water quality objectives, such that "a new order that relies on the same approach would not have a high likelihood of success." (CC136.) *ELF* confronted no comparable admission by the agency that its chosen approach had already failed. The Board cannot invoke *ELF* to validate a program its own findings disavow.

[55] For example, Ag Order 4.0 adopts the Basin Plan's limit of 10 milligrams/liter of nitrate as nitrogen for water bodies that do not have an established total maximum daily load (TMDL), and

That admission makes sense. If discharges do not meet a receiving water limit, even after growers have deployed "implementation measures" and "follow-up monitoring" (CC260), there is little reason to think growers will meet the same limit merely because it is expressed as a "numeric limit" on individual discharges. (CC260, 272, 283.) That skepticism is especially warranted given that numeric-limit enforcement is optional. (See CC260, 272, 283 ["Dischargers *may* also be required to perform additional ranch-level surface discharge monitoring and reporting to confirm that they are achieving the numeric discharge limit," emphasis added].)

The surface water receiving limits themselves also leave much to be desired. Recall that, for groundwater, the Regional Board developed an operational benchmark and time schedule for nitrate discharge that would achieve the receiving water limit for groundwater. (See *ante* at pp. 28-32; CC226-33.) But no equivalent mechanism for achieving surface water receiving limits exists. Many of the surface water receiving limits merely duplicate other existing limits. "[E]stablished nutrient TMDLs" and compliance dates are merely pasted into the Order without changes; waterbodies without TMDLs, including for nitrate, "are assigned numeric limits based on the Basin Plan." (CC260.) For pesticides, limits and compliance dates are also copied from established TMDLs, various studies, U.S. EPA programs, or the Basin Plan. (CC272.) The same goes for turbidity limits, which are based on existing "evaluation guideline values" with compliance dates set for 11 years by analogizing from other limits. (CC284.) Merely listing a source for each limit does not show that the limit will be met or is capable of being met. And again, the Regional Board had no evidence, and cites none here, that the surface water receiving limits will actually be achieved.

Critically, receiving water limits do not substitute for riparian protections: riparian areas prevent pollutants from reaching surface waters in the first place, before any monitoring may show that numeric limits on discharges are needed (or that those limits, once in effect, are not being met). (CC294-96, 300, 7129, 32084.) Moreover, riparian areas protect beneficial uses in ways that receiving water and numeric limits do not. As Board senior environmental scientist Chris Rose explained, "the water itself could be clean enough to drink. But in the absence of riparian vegetation,

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provides that growers who do not meet that limit "are subject to a numeric discharge limit that is the same as the receiving water limit." (CC260.) Yet, according to the Board, even though Ag Order 4.0 establishes that numeric limit, current BPTC "may not be capable" of achieving it. (CC157.)

you are not protecting aquatic life beneficial uses. It is the riparian vegetation that is the trigger for aquatic ecology to really take off and move[,] and to protect those beneficial uses." (CC10230 [audio at 2h50m, Hunt Dec. Ex. 10 at pp. 24-25].) Receiving water limits, in contrast, are triggered only when monitoring shows—and is capable of showing—that they were exceeded. (See CC128 [Board will use "monitoring and reporting" to assess if receiving water limits are being achieved].)

Insufficient TMDL compliance mechanisms. Ag Order 4.0's surface water program is not likely to attain water quality objectives within any reasonable time horizon. In areas where TMDLs have been established, Ag Order 4.0 does not require compliance with them for decades. The compliance date for the Morro Bay Sediment TMDL, for example, is 2053. (CC78; see also CC63 [2044 compliance date for dry season nitrate and orthophosphate limits].) Even more problematic under Key Element 2, the only consequence of violating these limits when they eventually apply is further monitoring. (CC6069, 11500.) Like prior orders, Ag Order 4.0 sets deadlines with "no measurable, enforceable milestones," nor "consequences to actually ensure compliance is achieved." (CC11500 [Petitioners' comments]; see, e.g., CC63, 78.) A program whose limits do not compel results for twenty to thirty years, and that pairs those distant deadlines with no enforceable milestones and no consequences along the way, cannot support a finding that the described management practices have a high likelihood of attaining water quality requirements.

Other elements. The Regional Board and Ag Intervenors highlight further surface water elements in Ag Order 4.0, many of which carry over from Ag Order 2.0. (Respondents' Br. at pp. 39-40; Intervenors' Br. at pp. 43-44.) But these elements do not fill the gap. Irrigation and nutrient management plans have been required since 2012. (SB2407-08 [Ag Order 2.0].) The same goes for practices "to prevent erosion, reduce stormwater runoff quantity and velocity, and hold fine particles in place," as well as "management practices in non-cropped areas." (SB2398 [Ag Order 2.0].)

Ag Order 4.0 is actually *weaker* on riparian protection than the failed approach from earlier orders. Ag Order 2.0 prohibited the disturbance of "existing, naturally occurring, riparian vegetative cover" to minimize the discharge of waste. (SB2398-99.) Ag Order 4.0 duplicates or even backtracks on this prohibition: it limits the prohibition's scope to only "established" riparian vegetative cover. (CC49.) It further eliminates language emphasizing that riparian areas should be maintained for "effective streambank stabilization and erosion control, stream shading and temperature control, sediment and chemical filtration, aquatic life support, and wildlife support." (Compare CC49 with SB2398.) And Ag Order 4.0 copies 2.0's language requiring growers to "avoid, minimize, and mitigate" waste and sediment discharges when disturbing riparian areas—all without any enforceable standards. (SB2398-99.) These provisions are especially problematic given that removing riparian vegetation "*increase[s]* waste loading to waters of the State and impair[s] beneficial uses." (CC304, emphasis added.)

Ag Intervenors end by referring to "30 additional requirements." (Intervenors' Br. at p. 44.) But these largely repeat or clarify existing policies of unsubstantiated efficacy. For example, Ag Order 2.0 already required management practices to prevent stormwater runoff, which Ag Order 4.0 clarifies. (SB2398; see CC40, 47.) Absent effective monitoring and enforcement, these "requirements" amount to just a warning.

In sum, Ag Order 4.0's surface water program does not meet the legal standard set in Key Element 2 or ensure Basin Plan implementation, as section 13263 requires. The Board had the single best (and necessary) corrective at its fingertips—riparian setbacks—but it decided to adopt Ag Order 4.0 without them. That decision was a prejudicial abuse of discretion.

B. Miscellaneous "Concerns" Do Not Justify the Regional Board's Decision to Adopt Ag Order 4.0 Without Riparian Setbacks.

The Regional Board and Ag Intervenors cite various factors unrelated to Key Element 2, the Basin Plan, or surface water quality to justify the Board's decision to issue Ag Order 4.0 without riparian setbacks. These factors include "concerns" about food safety, insufficient time to consider setback requirements, and uncertain consequences, legal risk, and costs. (Respondents' Br. at pp. 41-42; Intervenors' Br. at pp. 40-41.)

The Court should reject these efforts, for three reasons. First, as explained in Petitioners' opening brief, Key Element 2 makes concerns about "complexity, legality, and economic burden" irrelevant. (Opening Br. at p. 49; CC16583, 32831.) The only legally relevant question is whether there is substantial evidence that Ag Order 4.0's surface water program "will attain water quality requirements." (CC32831 [Nonpoint Source Policy Key Element 2].) Any "concerns" about food safety, costs of compliance, and so on do not allow the Board to sidestep Key Element 2's obligations or the substantial evidence standard.[56]

Second, the Board did not cite any of these concerns in Ag Order 4.0 or its findings. (Indeed, as the Board now admits, "the Regional Board never made any findings with respect to riparian setbacks in Ag Order 4.0." (Respondents' Sur-Reply at p. 4).) As such these "concerns" are *post hoc* rationalizations by counsel that cannot support the Board's decision. (*Southern California Edison Co. v. Public Utilities Commission* (2000) 85 Cal.App.4th 1086, 1111 ["We may not affirm an agency's action on a basis not embraced by the agency itself. . . . Moreover, a court 'may not accept appellate counsel's post hoc rationalizations for agency action,'" quoting *Motor Vehicle Manufacturers Assn. v. State Farm Mutual Automobile Insurance Co.* (1983) 463 U.S. 29, 50)].)[57]

Third, the "concerns" the Board and Ag Intervenors cite were fully vetted and addressed over a four-year period. Over that time, the Board's expert staff had developed a proposal for riparian setbacks based on extensive literature, diverse regulatory approaches, and careful consideration of growers' needs. (CC7155.) As Ag Intervenors acknowledge, "the Regional Board's process for developing Ag Order 4.0 was transparent, deliberative and proceeded in a logical and legal manner that involved Staff recommendations, public comment and testimony, and Regional Board member feedback along the way." (Intervenors' Br. at p. 39.)

More specifically, with regard to each "concern" the Board and Ag Intervenors now raise:

Food safety. The Regional Board concluded as early as Ag Order 3.0 that riparian setbacks

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[56] The Board argues that the question of whether there is "enough evidence to support" Ag Order 4.0 is separate from whether Key Element 2 was met. (Respondents' Br. at p. 42, fn. 9.) But these questions are intertwined. Key Element 2 is not met without riparian setbacks, yet the Ag Order 4.0 findings say that it is. (CC126-27.) The evidence does not support this finding, so the evidence is insufficient to support the Order.

[57] As discussed above, Ag Order 4.0's findings do just the opposite: they reiterate that riparian protections are valuable and effective. (CC160, 284-304.) It is true that Board members mentioned some of these concerns during the Board's December 2020 hearing, but those concerns are not in the written findings themselves, as they must be to support the Board's decision. (See *City of Santa Cruz v. Local Agency Formation Commission* (1978) 76 Cal. App.3d 381, 391 ["Unlike Code of Civil Procedure section 1094.5, section 1085 requires no written findings of fact. . . ."]; San Jerardo Writ Petition, at p. 1 [asserting claims under § 1094.5]; see also *Topanga*, *supra*, 11 Cal.3d at p. 516, fn. 14 ["By exposing the administrative agency's mode of analysis, findings help to constrict and define the scope of the judicial function."].)

were not proven to cause food safety concerns. (CC34800.) Yet the Board now claims that food safety remained a problem, citing a 2007 survey in which some growers reported that some buyers of produce "suggested removal of non-crop vegetation from the ranches to prevent contamination from pathogens." (Respondents' Br. at p. 41, citing CC302-03.)

The evidence contradicts the Board's claim. In January 2019, the Regional Board received comments about food safety, including concerns regarding animal habitats, consumer confidence, and general food safety. (CC5232-39.) Then, in May 2019, the Board "requested that staff develop a workshop focusing on food safety issues" related to riparian habitat management. (CC19005.) Staff did so, creating a workshop "to provide context on this issue's complexity to inform the Board's consideration of riparian habitat management requirements." (CC19006.) Buyers and growers, including past commenters, then had and took the opportunity to share their concerns at the subsequent September 2019 workshop. (CC19006-08.)

Food safety concerns were then covered thoroughly in the Draft Environmental Impact Report for Ag Order 4.0. The Report concluded that food safety risks were "less than significant" (CC6635); the Board simply "has not been presented with sufficient evidence to conclude that the additional riparian vegetation that would be established under [Ag Order 4.0] would result in food safety impacts." (*Ibid.*) Regarding comments received at the September 2019 Board meeting, the Report concluded that Regional Board staff did not believe the concerns were "supported by scientific research." (*Ibid.*) And as for the single grower survey from 2007 the Board references (Respondents' Br. at p. 41, citing CC302-03), Ag Order 4.0's findings cite the survey alongside observations that growers have "removed riparian vegetation," which "increase[s] waste loading to waters of the State and impair[s] beneficial uses." (CC301, 304.) Moreover, the survey is nearly two decades old, was taken in a single county, and reveals that at most only 19 percent of respondents described concerns about food safety among buyers. (CC301-04.)

Lack of time. Ag Intervenors assert that "more time and effort was needed to evaluate and consider" riparian-management practices, including setbacks. (Intervenors' Br. at p. 40; CC36679-81.) However, as we discussed above, Board staff developed their riparian setbacks proposal over a four-year process, during which every concern that growers and Board members had raised about riparian setbacks was vetted and laid to rest. As discussed above, the Draft Environmental Impact Report dismissed concerns about food safety. (CC6635.) Potential costs were site-specific and not significant. (CC6585-87). The setbacks accounted for Central Coast-specific policies. (CC7136-37, 7138-42, 7144-46.) And Staff addressed the concerns that Ag Intervenors now resurrect (discussed above and below). (See, e.g., CC5891-93.)

Unconsidered consequences. Ag Intervenors further assert that riparian setbacks had "serious consequences and unintended consequences," including that "technical experts" had expressed concerns about the "lack of connection and specificity" between riparian setbacks and surface water quality in the Central Coast region. (Intervenors' Br. at pp. 40-41, citing CC8397-99, 10057-59.) The Board similarly argues that "[t]here is evidence in the record suggesting that more investigation into impacts of mandatory riparian setbacks was necessary" because prior riparian efforts were not widely adopted or had been ineffective (Respondents' Br. at pp. 41-42, citing Hunt Dec., Ex. 8 at pp. 10-11, 13 and CC36686-87.)

Each of these concerns was raised and resolved. A June 2020 technical memorandum (CC8346) had raised the purported lack of clarity in the setback requirements, claiming that the studies Staff had used were not clearly "specifically applicable to agricultural and uses [sic] in the central coast region," and that it was unclear "how the setback criteria were calculated" or how they would achieve water quality objectives. (CC8398; see also CC10057-59.) But there was no evidence, and neither the Board nor Ag Intervenors cite any, that basic principles of riparian science do not apply across ecosystem types or regions. Moreover, staff's riparian setbacks proposal included summaries of the minimum and maximum buffer sizes based on specific ecosystem functions in the literature, as well as consideration of slopes and stream types (CC7136-37, 7138-42), and staff's proposal accounted for buffer sizes across Central Coast municipalities. (CC7144-46.) Lastly, the fact that prior regulations regarding vegetative riparian buffers "had minimal impact" (Respondents' Br. at p. 42) only underscores the need for comprehensive riparian setbacks like those Board staff had developed for Ag Order 4.0.

Legal concerns. The Regional Board and Ag Intervenors next cite "legal concerns," including compliance with county ordinances, "how riparian setback requirements might work together with laws such as the Williamson Act," that riparian setbacks are not a discharge of waste nor water quality objectives, and that setbacks "could result in takings of private land." (Respondents' Br. at p. 42; Intervenors' Br. at pp. 40-41.) Each of these was fully addressed.

Regarding county-ordinance compliance, Board staff made clear that, based on discussions with local-ordinance managers and associated documents, they planned an exemption to avoid regulatory conflicts. (Hunt Dec. Ex. 11, at pp. 70-80; see also Hunt Dec. Ex. 10, at pp. 20-21.) Staff took the same approach regarding the Williamson Act. (See Hunt Dec. Ex. 10, at pp. 71-72 [discussing "separate exemption" for Williamson-Act contracts].) On WDRs, as early as March 2019, staff explained that "section 13243 authorizes a regional board, in [WDRs], to specify certain conditions or areas where the discharge of waste or certain types of waste will not be permitted." (CC5892, 6475-80.) On takings, staff observed that, in 2013, "the State Water Board found that the water quality buffer plans required under Ag Order 2.0 did not . . . constitute a regulatory taking." (CC5892.) Growers would not be deprived of all economic benefits of the land within riparian setbacks. (*Ibid*.) Furthermore, lost agricultural production would be minimal: "it is likely that many of the lands will be converted from bare ground." (CC7169.) In the end, only "0.9 percent of the total irrigated agricultural land in the region" would "potentially [be] taken out of agricultural production" from setbacks. (CC6475.)

Cost concerns. The Board also raises nebulous "issues regarding cost." (Respondents' Br. at p. 42.) The Board does not specify what "issues" it is referring to—perhaps the one Board member who raised "potential economic cost" in the December 2020 hearing. (CC36635.) But the Draft Environmental Impact Report responded to this concern, too, and at length. It found that, even if some lands must be taken out of production due to setbacks and compliance increases costs, "the question of whether these increased costs could impact growers in the central coast region to such a degree as to cause them to go out of business or sell their lands is essentially speculative"—as in, unfounded. (CC6585-87; see also CC6586 [riparian-related costs would be "less than significant"].)

In sum, the purported complexity, legality, and cost concerns that the Board and Ag Intervenors now cite are legally irrelevant; the Board's decision did not rely on them; and they were thoroughly vetted. A few Board members' references to such "concerns" at the eleventh hour, and counsel's post-hoc rationalizations, cannot and do not justify or provide substantial evidence for the Board's decision to adopt Ag Order 4.0 without riparian setbacks. The Board abused its discretion.

C. Staff's Proposed Riparian Setbacks Are Not Ripe for Review, and in Any Event They Are Consistent with Water Code Section 13360.

Ag Intervenors make one last argument: that riparian setbacks, at least as Staff had proposed them in the Draft Order, would violate subdivision (a) of Water Code section 13360 by dictating the manner of compliance. (Intervenors' Br. at pp. 45-48.) Even if this argument were correct, it is irrelevant because it would not justify adopting Ag Order 4.0 with no riparian setbacks and no adequate substitute. That is, regardless of whether staff's proposed riparian setback requirements would have complied with section 13360, Petitioners do not (and could not) seek to compel the Regional Board to adopt *that proposal*. Rather, Petitioners argue only that, in light of the record before the Board, it was an abuse of discretion to adopt Ag Order 4.0 without riparian setbacks. To satisfy Key Element 2, the Regional Board must issue WDRs that have a high likelihood of achieving surface water quality objectives and reasonably protecting beneficial uses. Ag Order 4.0 does not meet this standard.

Moreover, Ag Intervenors' section 13360 argument fails. As the Regional Board argues, the argument is not ripe for review. (Respondents' Sur-Reply at pp. 3, 5-6.) And, as the Board argues, Ag Intervenors' argument is incorrect: staff's proposed riparian setbacks did not unlawfully dictate the manner of compliance under section 13360. (*Id.* at pp. 7-8.) We add two points here. First, Ag Intervenors' only evidence that Options 1 and 3 were "a non-option" is that one Board member said so. (Intervenors' Br. at p. 48, citing Hunt Dec., Ex. 11 at p. 6.) Second, Ag Intervenors claim that Option 2 "dictated widths," "mandated percentage amounts for vegetative cover," and prohibited "certain activities" (*id.* at p. 46), but it would have done these things only if growers *chose* that option (that is, growers still could have chosen Option 1, 3, or 4 instead). Staff's proposed riparian setback requirements were sufficiently flexible to comply with section 13360.

V. CONCLUSION

For the foregoing reasons and the reasons explained in the opening brief, the Court should grant Petitioners' petition for a writ of mandate.

Respectfully submitted,

Dated: June 26, 2026

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610.

On June 26, 2026, I served true copies of the following document(s) described as **PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address anamv@stanford.edu to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 26, 2026, at Stanford, California.

Ana Villanueva

Ana Villanueva

SERVICE LIST

San Jerardo Cooperative Inc., et al. v. State Water Resources Control Board, California Regional Quality Control Board, Central Coast Region, et al.
Sacramento County Superior Court Case No. 23WM000108

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