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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' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Date: September 11, 2026
Time: 1:30 p.m.
Dept.: 12

Assigned for All Purposes to Hon. Stephen Acquisto

No trial date set

Action filed October 27, 2023

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TABLE OF ABBREVIATIONS AND TERMS

For the convenience of the Court and the reader of this brief, 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
*San Jerardo Petitioners (or Petitioners)	San Jerardo Cooperative, Inc., Comité De Salinas, Monterey Coastkeeper, Pacific Coast Federation of Fishermen's Associations, Inc., 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
*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
*TNA	Total Nitrogen Applied
*WDRs	Waste discharge requirements

I. INTRODUCTION

How long may an agency pursue a failed approach to regulation? Not indefinitely, according to binding state water policy, which requires that California's water boards[1] set out specific time schedules for stopping water pollution that have a high likelihood of achieving that goal, and that use current standards for best control of that pollution.

In California's Central Coast region, the Regional Board adopted an agricultural permit that failed to protect to surface water. The State Board then modified this permit on review so that it also failed to protect groundwater. This case challenges both of these actions.

Agricultural operations in the Central Coast have polluted groundwater for decades. The Regional Board developed a water quality permit for irrigated agriculture that rethought several prior failed approaches and established a scientifically supported, data-based compliance schedule. But the State Board, however, said not so fast: on review of that permit, the State Board gutted the Regional Board's groundwater program, relying on an administrative decision made years earlier on a far inferior record (and which, by its own terms, did not actually prohibit what the State Board disapproved), and ignoring newer, more relevant research.

In so doing, the State Board committed several legal errors. It revived measures that the record shows have failed and will continue to fail, while punting any meaningful action until ill-defined and indefinite administrative processes conclude (if ever). It failed to make required findings that the remaining shell of a program complied with the law, and in fact denied that it was taking any permitting action at all. The State Board also ignored its statutory duty to make findings addressing the impacts of its amendments to the permit on the environmental justice communities who will bear the brunt of the pollution that will result from the board's actions. These actions violate several of the State Board's legal obligations, as alleged in the San Jerardo Petitioners' first, second, fourth, and sixth causes of action, including binding state water policies, the Court of Appeal's command to adopt a permit with adequate time schedules, and the Legislature's directive to make environmental justice findings.

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

With respect to surface water pollution, the Regional Board is also not without fault. The record proves the ongoing degradation of surface waters and the vital importance of riparian areas to preventing further violations of water quality objectives. Yet the Regional Board stripped out its own proposed requirements for protecting and restoring riparian areas at the eleventh hour. What's left is a self-contradictory mess: although the final permit contains dozens of pages of findings (supported by dozens of studies and hundreds of data points) that riparian degradation has led to worsening water quality and devastating effects on wildlife and human uses of surface water, in abandoning riparian-area management practices, the Regional Board ended up making no changes to its failed approach, and yet somehow found that surface water quality would improve. This was an abuse of discretion by the Regional Board, as alleged by the Petitioners' fifth cause of action.

The people of the Central Coast Region have waited too long for a water quality permit that adequately regulates pollution from irrigated agricultural operations, as the law requires. Only this Court can now ensure the people get one. The petition for a writ of mandate should be granted.

II. ORGANIZATION OF THIS BRIEF

This brief addresses San Jerardo Petitioners' four causes of action against the State Board and one cause of action against the Regional Board. The Standard of Review and Regulatory Background sections are common to all causes of action. Section V contains factual background and argument on Petitioners' claims against the State Board (the first, second, third, fourth and sixth causes of action). Section VI concerns Petitioners' fifth cause of action against the Regional Board and contains its own factual background and argument.

III. STANDARD OF REVIEW

This action is brought under Water Code section 13330 and Code of Civil Procedure section 1094.5. Under these provisions, an agency abuses its discretion if the agency does not proceed "in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).) The Court exercises "independent judgment on the evidence." (Wat. Code, § 13330, subd. (e).)[2] Under this standard, the agency must have made findings that "bridge the analytic gap from the raw evidence to the ultimate

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

decision or order," and a failure to do so is an abuse of discretion. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (*Topanga*).) Even where an agency issues findings, under the independent judgment standard, the trial court "does not defer to the fact finder below and accept its findings whenever substantial evidence supports them. Instead, it must weigh all the evidence for itself and make its own decision about which party's position is supported by a preponderance." (*Alberda v. Bd. of Retirement of Fresno County Employees' Retirement Assn.* (2013) 214 Cal.App.4th 426, 435, italics omitted.) "The question is not whether any rational fact finder could make the finding below, but whether the reviewing court believed the finding actually was correct." (*Ibid*.) The Court exercises "independent review" on questions of law, including those relating to interpretation of state water policy. (*Environmental Law Foundation v. State Water Resources Control Bd.* (2023) 89 Cal.App.5th 451, 473 (*ELF*).)

IV. REGULATORY BACKGROUND

A. Porter-Cologne

Porter-Cologne, Water Code section 13000 et seq., protects all waters of the State of California, including groundwater. Porter-Cologne requires the Regional Board to develop a Basin Plan, subject to State Board approval, that sets water quality objectives to protect the beneficial uses of water in the Central Coast region; these uses include safe drinking water and wildlife protection. (§§ 13240-13245; CC34051, 34061, 34067-84, 34089-101.)

Because "discharges of waste into waters of the state are privileges, not rights," regional boards must issue permits, one form of which is waste discharge requirements (WDRs), for discharges of waste to waters of the state. (§ 13263; see CC32822-25.) WDRs, which may apply generally to classes of dischargers, must prescribe requirements to meet the water quality objectives and protect the beneficial uses in the Basin Plan and must be consistent with the applicable Basin Plan and with state water quality policies. (§§ 13240, 13263.) State water quality policies may be adopted or amended only pursuant to procedures in Water Code sections 13140 through 13149.2.

B. Requirements for Issuing or Reissuing Regional or Statewide WDRs

The issuance of permits, including WDRs, is a quasi-judicial function of the State Board (*Cal. Assn. of Sanitation Agencies v. State Water Resources Control Bd.* (2012) 208 Cal.App.4th

1438, 1453), that "must be supported by findings 'bridg[ing] the analytic gap between the raw evidence and ultimate decision or order.' [Citation.]" (*Asociación de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1281 (*AGUA*).) If the agency does not make explicit findings, a court cannot infer them (*Topanga*, *supra*, 11 Cal.3d at pp. 515-16), and when an agency action is subject to review pursuant to Code of Civil Procedure section 1094.5, failure to make findings is abuse of discretion (*id*. at pp. 513-16; see § 13330, subds. (a), (e)). This findings requirement applies to a water board's adoption of WDRs; in issuing permits, a board must "enunciate its reasoning; which must in turn be supported by the evidence." (*Southern Cal. Edison Co. v. State Water Resources Control Bd.* (1981) 116 Cal.App.3d 751, 759; 762; *AGUA*, *supra*, 210 Cal.App.4th at pp. 1268, 1281, 1286.) This standard applies even when the State Board is reviewing and possibly modifying a regional board's issuance of WDRs. (See, e.g., *ELF*, *supra*, 89 Cal.App.5th at p. 474; see also *Lake Madrone Water Dist. v. State Water Resources Control Bd.* (1989) 209 Cal.App.3d at pp. 163, 168 [treating both regional board's issuance of enforcement order and State Board's review and modification thereof as a single adjudicatory proceeding].)

In 2022, the Legislature amended Porter-Cologne to add a requirement that when "issuing or reissuing" regional or statewide WDRs or amending state water quality policy, a water board must "make a concise, programmatic finding on potential environmental justice, tribal impact, and racial equity considerations related to the issuance." (§ 13149.2, subds. (b), (c).)[3] The Water Board's findings must be based on information in the record, summarize how the permitted activity will impact water quality in disadvantaged or tribal communities as a result of the activity, and identify measures within their authority to address the anticipated impacts from the activity. (*Ibid*.)

C. The Nonpoint Source Policy

In 2004, under the direction of the Legislature, the State Board adopted the Nonpoint Source Policy, which governs Water Board actions in creating nonpoint source pollution control programs, including WDRs and basin plans. (CC32818; see §§ 13140, 13369.) The Nonpoint Source Policy contains five Key Elements, each of which a WDR must contain. (CC32830; see *Monterey*

[3] Environmental justice considerations involve the "fair treatment and meaningful involvement of people of all races, cultures, income, and national origins" disproportionately impacted by pollution. (Pub. Res. Code, § 30107.3.)

Coastkeeper v. State Water Resources Control Bd. (2018) 28 Cal.App.5th 342, 349-50, 367.)

In implementing a nonpoint source pollution control program, Key Element 2 requires that a regional board must "be able to determine that there is a high likelihood that the program will attain water quality requirements." (CC32831.) If the program relies on management practice (MP) implementation, the regional board "must be convinced there is a high likelihood the MP will be successful," and "MP implementation may never be a substitute for meeting water quality requirements." (*Ibid*.)

The Nonpoint Source Policy recognizes that there are "instances where it will take time to achieve water quality requirements." (CC32832.) In such cases, Key Element 3 mandates the program "include a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements." (*Ibid.*) The time schedule "may not be longer than that which is reasonably necessary to achieve an NPS implementation program's water quality objectives." (*Ibid*.)

D. The Antidegradation Policy

The Antidegradation Policy, adopted in 1968, provides that high-quality waters:

> will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

(CC32680.) It further provides that any discharge to high quality waters:

> will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge 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.

(*Ibid*.) The Antidegradation Policy applies to WDRs and State Board decisions modifying WDRs. (See, e.g., *ELF*, *supra*, 89 Cal.App.5th at p. 474) and it requires that findings of compliance be made when adopting or modifying WDRs (*ibid.*; *AGUA*, *supra*, 210 Cal.App.4th 1255, 1278).

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

A. Factual Background

1. Groundwater Pollution in the Central Coast

Communities in the Central Coast Region rely on groundwater for 90 percent of their drinking water. (CC150.) For decades, irrigated agriculture has polluted groundwater with nitrate. (CC80, 145-50 [citing CC22110], 222-23 [citing CC25545].) California's limit for nitrate in drinking water is 10 mg/L. (CC114 [citing CC29228, 22110], 151, 34092; Cal. Code Regs., tit. 22, § 64431.) Consuming nitrate-contaminated water causes birth defects and potentially lethal methemoglobinemia ("blue baby syndrome") in infants and can cause colorectal cancer, thyroid disease, and neural tube defects in adults. (CC113-14, fn. 6 [citing CC29228, 21838, 22615]; CC114 [citing CC29228].)

Irrigated agriculture is the primary cause of widespread and severe groundwater nitrate contamination in the Central Coast. (CC84-86, 114, 2225, 18969; SB2380-81.) While crops need nitrogen to grow, they can use only a limited amount at a time. (CC143-44, 227, 18992-19001, 22136, 28608; see also CC28841.) When growers apply more nitrogen to plants than is needed, the excess nitrogen remains in the ground and moves easily with groundwater. (CC227, 22136.) Over time, it undergoes a series of chemical reactions that convert the nitrogen to harmful nitrate; when this nitrate percolates into groundwater, contamination can result. (CC225-27, 22136-45.)

The potential to pollute is largely a function of two variables: the amount of nitrogen that a grower applies (commonly referred to as "A") and the amount of nitrogen removed through harvest, sequestration in the wood of permanent crops, or other removal methods (referred to as "R"). (See CC144, 163-64, 227-28, 391-96.) The difference between the two values, A minus R (denoted A–R), "is a reasonable proxy" for the amount of nitrogen left in the field (direct measurement of nitrogen discharge is infeasibly costly at large scales). (CC163-64; see CC32962, 35221-22, 6113 [audio at 0h35m, Hunt Dec. Ex. 5 at pp. 24-27].)[4] Growers' average reported A–R in the Central

[4] As explained in the Hunt Declaration, the Administrative Record contains audio recordings without an accompanying transcript in the record. Petitioners have transcribed portions of these recordings separately. In this brief, a citation in the form "CC*nn* [audio at 0h00m, Hunt Dec. Ex. 1

Coast Region is 340 pounds per acre per year. (CC231 [citing CC18965].) In other words, an average of 340 pounds per acre per year remains in the soil after harvest and is susceptible to leaching to groundwater—an amount that exceeds by an order of magnitude the 50 pounds per acre per year the Regional Board found to be protective of safe drinking water. (*Ibid.*)

Although agriculture is the primary driver of nitrate contamination of groundwater used as drinking water, the substantial costs to address contaminated drinking water fall disproportionately on disadvantaged communities, as they are most likely to live in areas reliant on contaminated groundwater. (See, e.g., CC149-56, 17704, 18336, 20487, 22110, 22134, 22168-72, 22513, 23899, 25583-870.) Across the Central Coast, nitrate-contaminated wells serve hundreds of thousands of people, including 28 percent of sampled on-farm drinking water wells. (CC150-54, 222-23, 323, 307, 18965, 38087; see also CC256 [citing CC18766].) Groundwater basins serving the primarily Latino communities of Greenfield, Soledad, Gonzales, and East Salinas experience some of the worst groundwater nitrate contamination, and contamination is widespread in agricultural areas. (CC86-87, 222-23 [citing CC18965, 307], 323, 22134, 38094; SB607-08, 611.) Over half of sampled wells in portions of the Salinas Valley exceed the MCL (CC223 [citing CC18965, 307]), and average nitrate concentrations are three times the MCL in the Salinas Valley East Side subbasin (CC222 [citing CC18965, 307]).

As nitrate concentrations increase in these communities, so does the financial burden on their residents (see generally CC149-156); in the San Jerardo Cooperative, a low-income community and one of Petitioners here, nitrate contamination forced three drinking water wells to be taken out of service; the new replacement well cost over $6 million, with residents paying quintupled water bills to finance it. (CC153-54 [citing CC17704].) As of 2020, in the most recently drilled well, nitrate concentrations were already approaching the MCL. (CC11548.)

2. Ag Orders 1.0, 2.0, and 3.0 (2004-2017)

Until the adoption of Ag Order 4.0, regulation of irrigated agriculture in the Central Coast focused on measures including monitoring, education, and adoption of management practices

at p. *xx*]" refers to a timestamp of the audio file in the record at CC*nn* and to the transcription that Petitioners are providing via an exhibit to the Hunt Declaration.

designed to minimize nitrate discharges to groundwater, without a quantified compliance schedule. These measures, embodied in three previous Regional Board "waivers" of WDRs (see § 13269), failed to control pollution or result in progress towards doing so: growers continued to apply and discharge nitrogen at rates that resulted in ongoing pollution. (CC84-85, 226-27; see 12791-800.)

In 2004, the Regional Board adopted its first order governing agricultural discharges: Ag Order 1.0. (SB2473.) Ag Order 1.0 gave growers the option of enrolling in a waiver program in lieu of obtaining individual WDRs. (CC2475-79.) It required participating growers to develop a farm plan that included nutrient management practices to "ensure" their discharges did not further degrade groundwater, and to account for "specific nitrate concentrations in irrigation water in determining agronomic nitrogen application rates." (SB2480.) Ag Order 1.0 required grower education about the harmful effects of nitrate pollution and methods to mitigate it (SB2476-77, 2484), and "most" growers participated in such education (SB2384). Ag Order 1.0 expired in 2009 but was renewed for several short periods. (SB2379-80; see § 13269, subd. (a)(2).)

During this period, the Regional Board reviewed the available data and concluded that, despite broad implementation of management practices and development of farm water quality plans, agricultural nitrogen discharges continued to severely impair water quality (SB2380-81, 2384, 2425-30.) In other words, Ag Order 1.0 had not worked.

As a result, Ag Order 2.0, adopted in 2012, contained more stringent requirements: monitoring requirements for three tiers of dischargers, verification that management practices would be effective, and a requirement that "Tier 3 dischargers"—those with the highest potential to pollute—make progress towards equalizing applied nitrogen and expected crop nitrogen uptake. (SB2394-96, 2400, 2405-10, 2446.) Ag Order 2.0 also required reporting of total nitrogen applied (TNA) by the highest risk growers; this TNA data would later prove vital for understanding why Ag Order 2.0 failed to effectively control nitrate discharges. (SB2394-95, 2406, 2465; CC226-27.)

It is unknown whether the provisions in Ag Order 2.0 would have worked; in 2013, following petitions for review of Ag Order 2.0, the State Board weakened the verification measures and struck the nitrogen balance ratio requirement. (CC32945-46, 32966.) The State Board further weakened Ag Order 2.0's compliance standard, requiring only "improved management practices" if previously

implemented measures were not found effective. (CC32940-43.)

Several environmental organizations challenged the State Board's actions and prevailed in the trial court and on appeal. (CC34646; *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th 342.) The Court of Appeal held that the State Board, by allowing only "improved management practices" to constitute compliance, "effectively over[rode]" the Nonpoint Source Policy's requirement of "specific time schedules" with "quantifiable milestones" that "assure that water quality objectives are eventually met." (*Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at pp. 368-70.)

In 2017, while that litigation was in process, Ag Order 2.0 expired and the Regional Board adopted Ag Order 3.0, which largely replicated Ag Order 2.0's provisions, but added additional monitoring and reporting requirements, including broader TNA reporting. (CC34732, 34758.) The *Monterey Coastkeeper* petitioners challenged that order. In a stipulated judgment entered in October 2019, the court found Ag Order 3.0 unlawful and set a deadline of January 31, 2021 (later extended to April 16, 2021), to adopt WDRs that complied with the law. (CC11527; Petitioners' Request for Judicial Notice (RJN), Exs. 1 and 2.)

3. The Eastern San Joaquin Order (2018)

Meanwhile, in 2018, in a separate administrative process, the State Board issued the ESJ Order in review of 2012 WDRs by the Central Valley Regional Board covering irrigated lands in a portion of the Central Valley Region. (CC33505.) The ESJ Order was intended to include provisions guiding other regional boards' development of WDRs for agricultural pollution, but explicitly provided that only those provisions "indicate[d] would be precedential." (CC33513 & fn. 15; see Gov. Code, § 11425.60, subd. (a) [decision not precedential unless so designated].) The ESJ Order explicitly stated that almost a dozen of its requirements and exceptions—outreach, management practice reporting, sediment and erosion control practices, irrigation management, certification of Irrigation and Nutrient Management Plans (INMPs), nitrogen applied and removed reporting, nitrogen removal coefficients, definitions of certain terms, follow-up requirements for outliers, recordkeeping and monitoring requirements, and certain exemptions—would be precedential on all regional boards. (CC33533-36, 33538-40, 33544, 33546, 33555, 33557, 33567-68.)

Other requirements in the ESJ Order were not precedential. For example, one provision

required only Central Valley growers to propose detailed plans intended to meet water quality objectives within ten years and to propose a program to evaluate their effectiveness. (CC33568, 33572.) In section II.A.11 (hereafter Section 11), titled "Direction to Central Valley Water Board Regarding Use of Submitted Data," the State Board stated that it "is premature at this point to project the manner in which the multi-year A/R ratio target values might serve as regulatory tools"; the State Board did not designate this section "precedential." (CC33577-78; see SB1343.)

4. Ag Order 4.0 (2021)

Ag Order 4.0, issued in April 2021, represented a new chapter in the decades-long struggle to control nitrate pollution in Central Coast groundwater. For the first time, the Regional Board established enforceable, numeric fertilizer application and nitrogen discharge standards, concluding that previous efforts to control nitrate pollution without them—through Ag Orders 1.0, 2.0, and 3.0—had been ineffective. (CC84-85, 123-24, 136.) The Regional Board, finding that significant reductions in nitrate loading are needed to reduce recovery timelines and comply with the *Monterey Coastkeeper* decision, also included a detailed, quantified compliance time schedule. (*Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at pp. 369-70; CC131-33, 136, 155; Petitioners' RJN, Ex. 2.)

a. Contents of Ag Order 4.0

The Regional Board adopted two sets of standards tied to a timetable for implementation, both of which control nitrogen discharges to groundwater: (1) "application" standards, which set ceilings on how much nitrogen fertilizer a grower may use, and (2) "discharge" standards, which restrict a grower's A–R.[5]

The application standards restricted fertilizer nitrogen application to the 85th-90th percentile of growers' rates, based on a finding that these rates are so high that crops cannot plausibly take up enough of the nitrogen applied to avoid risk of discharge to groundwater. (CC226-30; 18992-19004) The discharge standards, rather, used A–R accounting to control the amount of nitrogen left in the soil after harvest. (CC230-32.) The discharge standards tightened over time with the goal of

[5] Ag Order 4.0 contained other new requirements, including a more detailed reporting scheme—the INMP—which required reporting R in addition to previously-reported TNA. (CC22, 25-26.) But the Order was clear that the numeric limits, and the consequences for exceeding them, were expected to be the primary tool driving down nitrate pollution. (CC84-85.)

eventually restricting this net discharge to 50 pounds per acre per year, which the Regional Board found would ultimately protect drinking water. (CC232-33.) To provide options for growers to comply, there were multiple ways to calculate their compliance with the discharge standard, including discount factors to incentivize practices that protect water quality. (CC26-29.)

The timing and consequences of violating the standards depended on whether the grower is enrolled as an individual (an Individual Discharger) or whether it is (like most growers) a member of a "third-party program" (a Participating Discharger). (CC12, 18-24, 30, 34-36, 54-57, 95, 111, 113.) For Individual Dischargers, the standards (after a short phase-in period) acted as "limits," and exceeding them was enforceable as a permit violation. (CC12, 25-29, 54-57, 33455; § 13350.) For Participating Growers, the standards acted initially as "targets," exceedance of which could result in additional requirements for reporting, monitoring, education, certifications, and improvement practices, but not enforcement actions. (CC25-29, 34-36, 54-57.) Participating Growers who repeatedly violated the targets could be disqualified from the third-party program, resulting in "targets" becoming enforceable "limits." Based on the timelines in Ag Order 4.0, no Participating Grower could be subject to enforcement before 2027. (CC30, 35-36, 57.)

Ag Order 4.0 contains more than three hundred pages of findings that (a) summarize the legal requirements that the Regional Board is subject to (including Porter-Cologne, the Basin Plan, and several governing State water policies); (b) describe Ag Order 4.0's components; (c) identify the evidence in the record supporting its requirements; and (d) support the Regional Board's conclusion that the order complied with governing law. (CC80-381.)

b. The Regional Board's Regulatory and Scientific Knowledge Supporting Ag Order 4.0

Development of Ag Order 4.0 took place over approximately four years and included hundreds of hours of public meetings, hearings, and workshops at which the Regional Board received detailed presentations and extensive written comments from growers, consultants, agronomists, soil scientists, hydrologists, economists, environmental groups, members of communities without access to drinking water, lawyers, staff, and many others. (CC4416-17, 4513, 4621, 4624, 4766-76, 4786, 4930-34, 4941, 5028-808, 5936, 5946, 5984, 5993, 6020, 6037, 6051,

6056, 6113-14, 6158-59, 6205, 7049-9549, 9690-95, 9700-12, 9978-10201, 10227-40, 11445-672, 16677-776, 18695, 32257-676, 38075-207.)

The Regional Board, in developing Ag Order 4.0, also had years of experience and knowledge that the State Board did not have when preparing the ESJ Order. The Regional Board had undertaken three prior iterations of irrigated lands programs covering discharges to groundwater—Ag Orders 1.0, 2.0, and 3.0—before it developed Ag Order 4.0, a process the Regional Board had worked on since 2004. By contrast, the Central Valley Regional Board did not regulate discharges to groundwater until 2012, eight years after the Regional Board's efforts began. (CC33642.) And the Regional Board had collected significant data to support its decisions; it had required TNA reporting starting in 2014 and expanded it in 2017, and this multi-year dataset showed no decreasing trend in nitrogen application despite Ag Order 1.0, 2.0, and 3.0's requirements. (CC226-27, 32226-28.) No such dataset existed to support the development of the ESJ Order, because nitrogen reporting in the Central Valley did not begin until 2015, and then only for a subset of the Central Valley growers. (CC33626.) So, while the Regional Board had strong data, including grower-reported nitrogen data, informing its decisions in Ag Order 4.0, similar data did not play a significant role in the ESJ Order's analysis. (CC33626, 33662; cf. CC33505-85).

The Regional Board also had the benefit of additional research and legal support. During the development of the 2018 ESJ Order, nitrogen removal coefficients—the crucial figures for calculating R—had not been developed. (CC33545.) By 2021, researchers had developed, and the Regional Board had approved, removal coefficients for crops grown on 89 percent of irrigated acreage in the Central Coast. (CC29, 164-65, 420, 32129-44.) And the Regional Board reviewed European Union regulatory programs that included numeric limits, resources the State Board did not use when developing the ESJ Order.[6] (CC233-34, 22035, 22335, 20811; cf. 33584.) Moreover, demonstrating that the scope of the ESJ Order's precedential value was at best unclear during the

[6] There were also differences in the two regions' physical settings. Agriculture in the Central Coast uses more nitrogen, and thus results in more discharge, than in the Central Valley, so nitrate concentrations—and drinking water contamination—is higher. (CC241, 22141.) Further, rainfall is greater in the Central Coast. (CC232-33.)

development of Ag Order 4.0, State Board attorneys[7]—including one of the attorneys who played a lead role in drafting the ESJ Order—suggested the Regional Board had legal space to move forward with Ag Order 4.0's numeric standards. (See CC32605, 6114 [audio at 9h01m, Hunt Dec. Ex. 6 at p. 258]; CC6158 [audio at 3h15m, Hunt Dec. Ex. 7 at pp. 127-34]; CC10230 [audio at 0h35m, Hunt Dec. Ex. 9 at pp. 27-28]; CC6158 [audio at 2h10m-24m, Hunt Dec. Ex. 7 at pp. 88-98].)

5. The State Board Order (2023)

Agricultural groups petitioned the State Board for review of the numeric standards pursuant to Water Code section 13320. (SB1.) After a two-year delay, the State Board issued the 2023 State Board Order after holding only a single public meeting and accepting no new evidence. (SB1336, fn. 10, 1339-45, 1348-49, 1370; see CC33577-78.)

The 2023 State Board Order allowed most elements of Ag Order 4.0 to go into effect (SB1369) but also directly modified the Order by prohibiting enforcement of the numeric standards, and sent it back to the Regional Board with additional direction to make further modifications in the future. (SB1348-53, 1369.) This remand limited the Regional Board's regulatory options to those approaches that had already proven ineffective. The 2023 State Board Order does not contain findings that its modifications to Ag Order 4.0 comply with governing law.

The 2023 State Board Order, in section II.A.4, relied on Section 11 of the ESJ Order to "eliminate" the enforceable numeric standards. (SB1349, 1351.) For the application standards, the order limits the consequences the Regional Board could impose for exceedance to "additional education." (SB1349.)[8] And the State Board limited the Regional Board's permitted use of discharge standards to requiring "additional education" and INMP certification by a "qualified professional"; any other consequence is prohibited. (SB1351-52.) The State Board also directed recalculation of the A and R accounting methods due to perceived conflicts with the ESJ Order, but only for use as non-binding targets. (SB1345-48, 1350.) However, as a result of all the restrictions on enforceable

[7] Attorneys for the State Board's Office of Chief Counsel serve both the regional boards and the State Board in administrative proceedings. (§ 186, subd. (c).)

[8] The State Board stated that it could not find a "clear connection between the amount of fertilizer nitrogen applied and impacts on water quality." (SB1348-49), But the reason for the application limits is to restrict the most extreme applications, where the evidence shows that a discharge is almost certainly occurring. (CC226-30, 18991-19004.)

numeric standards, the Regional Board is not permitted to adopt an enforceable regulatory program based on those recalculated standards (see SB1349). In other words, after the 2023 State Board Order, the regulatory options available to the Regional Board are now limited to those already attempted and shown not to be effective in the previous three orders. (CC84-85, 123-29, 226-27.) Consequently, a grower can meet the modified Ag Order 4.0's requirements, yet still discharge at rates above the now-unenforceable numeric standards—that is, above levels beyond which the Regional Board found do not reasonably protect water quality. (See CC84-85.)

The 2023 State Board Order does not establish any regulatory approach to replace the vacated numeric standards. Instead, the 2023 State Board Order announces an intention to convene an "expert panel" to evaluate nitrogen data from statewide regulatory programs and publish recommendations. (SB1352-53.) Then, only if the State Board finds a metric that "directly correlates" to grower's discharge and can "be used as a regulatory tool," the Board may issue further, unspecified "guidance" to regional boards. (SB1352-53, 1357.) There is no timeline for this process. And, because WDRs such as Ag Order 4.0 do not expire (compare § 13263 with § 13269, subd. (a)(2)), the 2023 State Board Order's modifications to Ag Order 4.0 will persist indefinitely.

B. Argument

1. The 2023 State Board Order Is an Issuance of Modified WDRs.

Whether the 2023 State Board Order qualifies as an issuance or reissuance of a WDR is a critical threshold question: if the order is such an issuance or reissuance, the Board is subject to certain legal obligations, which it did not fulfill. The answer is clear: as this Court previously found, the 2023 State Board Order is an issuance of modified WDRs.[9]

Despite State Board assertions that it was not "engaging in the permitting process [n]or issuing or reissuing waste discharge requirements" (S1338, fn. 12), the 2023 State Board Order issued a modified version of Ag Order 4.0 via its review authority under Water Code section 13320, subdivision (c), which allows it to "take . . . appropriate action itself" and vests the State Board with

[9] In its ruling on Ag Intervenors' demurrer, this Court found that the 2023 State Board Order "constitutes [an] issuance of WDRs" because it "allow[ed] a modified version of Ag Order 4.0 to issue with respect to controlling discharge of nitrates." (Ruling on Submitted Matter – Intervenors' Demurrer (Oct. 16, 2025), at pp. 4-6 (Demurrer Ruling).)

all of the Regional Board's powers. Here, the State Board took action itself by forbidding the Regional Board to enforce the numeric standards, with immediate effect. (SB1369.) The result is WDRs that do not expire on their own terms and which will be in effect indefinitely, but which lack the enforceable numeric standards of the unmodified Ag Order 4.0. This displaced the time schedule for compliance with Ag Order 4.0 that would have gone into effect at the end of 2023 had the State Board not acted. (CC12, 26, 30, 36, 54-55, 57.)

Thus, the State Board issued its own WDRs: it is the State Board's version of the WDRs that controls the conduct of growers. The Court of Appeal in similar circumstances treated modifications the State Board made to Ag Order 2.0 as a "modified waiver" (*Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at pp. 347, 367-70), and even the 2023 State Board Order itself has acknowledged that in other contexts, a State Board modification of a WDR qualified as an issuance that would have been subject to the rules that govern such an action. (SB1338, fn. 12 ["Had Assembly Bill 2108 been in effect in 2018, it certainly would have applied to our adoption of Order WQ 2018-0002."].)

2. The 2023 State Board Order Failed to Include Mandatory Findings.

a. The 2023 State Board Order Lacks Mandatory Findings, Including Findings Regarding the Antidegradation and Nonpoint Source Policies.

Because the State Board issued modified WDRs through the 2023 State Board Order, the State Board was required to adopt findings justifying the modified WDRs' now-weakened requirements. (*Topanga*, *supra*, 11 Cal.3d at p. 515.) The 2023 State Board Order fails to do so. Although the 2023 State Board Order contains a section labeled "Issues and Findings" (SB1337), it does not contain any findings that the modified WDRs will comply with governing law, in contrast with Ag Order 4.0's lengthy findings (CC122-59).[10] For example, the 2023 State Board Order does not contain any antidegradation findings, which both *AGUA* and *ELF* recognize is a requirement.[11]

[10] The 2023 State Board Order contains a discussion labeled "Nonpoint Source Policy." (SB1354-58.) This discussion responds to arguments regarding the Nonpoint Source Policy in petitions filed with the State Board by both Petitioners and Ag Intervenors, but it does not issue any findings regarding the Reissued WDRs' compliance with the Policy.

[11] *AGUA* is an instructive example. The court there evaluated WDRs for nitrate pollution from dairies, whose supporting documents acknowledged certain sources of pollution but failed to make a finding that those sources would be subject to best practicable treatment and control, as

(*AGUA*, *supra*, 210 Cal.App.4th at p. 1278; *ELF*, *supra*, 89 Cal.App.5th at pp. 474, 495.) And State Board guidance states that boards should "specifically state" that the Board has considered and complied with the Antidegradation Policy when "reissuing, amending, or revising" a permit. (CC32705.)[12]

The same logic must apply to the Nonpoint Source Policy: the State Board also had to make findings that the modifications to the WDRs complied with the Policy, but failed to do so. (*Topanga*, *supra*, 11 Cal.3d at p. 515.) The 2023 State Board Order does not even state that the modified WDRs' requirements will ever achieve water quality objectives. (See SB1349-52.) Without those findings, this Court and the public are improperly left to guess why, whether, and how the State Board believes that the modified WDRs comply with the law. (*Topanga*, *supra*, 11 Cal.3d. at pp. 516-17 & fn. 15.)

This lack of findings violates the law and is itself reason to grant a writ of mandate on the first, fourth, and sixth causes of action.

b. The 2023 State Board Order Lacks Mandatory Findings Related to Environmental Justice and Tribal Impacts.

Petitioner's sixth cause of action alleges that the State Board violated Water Code section 13149.2. Because the 2023 State Board Order is an issuance of modified WDRs, the statute required the State Board to make environmental justice findings. (§ 13149.2, subd (c).)

The State Board's failure to make section 13149.2 findings is consequential: nitrate pollution disproportionately affects low-income communities of color in the Central Coast, the exact populations that the findings requirement in section 13149.2 was designed to benefit. (CC222-23 [citing CC18965, 307], 22134, 38094; SB607-09, 611, 619, 626-27.) Moreover, every year of delay in reducing nitrate pollution will result in multiple years of additional cleanup time, thus locking in pollution for decades. (CC238-46.)

Because Water Code section 13149.2, subdivision (c) is unequivocal in requiring an environmental justice finding on issuances and reissuances of WDRs, the State Board was required

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required by the Antidegradation Policy. (*AGUA*, *supra*, 210 Cal.App.4th at pp. 1282-84.) This failure to make a finding of compliance with the policy rendered the WDRs invalid. (*Id.* at p. 1286.)

[12] This guidance applies facially only to permits issued under the Clean Water Act but has been held to be "instructive" for groundwater and nonpoint source dischargers as well. (*AGUA*, *supra*, 210 Cal.App.4th at p. 1270.)

to include them in the 2023 State Board Order. Its failure to do so violated section 13149.2, and Petitioners should therefore prevail on their sixth cause of action.

Instead of making the required findings, the State Board directed the Regional Board to make an environmental justice finding "to the extent that its reissuance of the General WDRs includes changes to the requirements in the existing General WDRs that go beyond what is needed to comply with" the ESJ Order. (SB1337-38, fn. 12.) This is insufficient. Like CEQA, section 13149.2 requires identification of both environmental justice impacts and measures the Water Boards can use to address those impacts. (§ 13139.2, subds. (b)(1)-(b)(2), (c); see Pub. Res. Code, § 21002.1, subd. (a).) And, as under CEQA, it is improper to defer informational findings until after the key decision is made; such deferral turns the findings requirement into "nothing more than *post hoc* rationalizations to support action already taken." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 394.) Requiring the Regional Board to do the State Board's job for it therefore violates the law.

3. The 2023 State Board Order Violates and Unlawfully Amends the Nonpoint Source Policy, and Petitioners Should Prevail on Their First and Second Causes of Action.

The evidence in the record shows that the State Board, via the 2023 State Board Order, left the Central Coast in a state with no valid WDRs or other permit governing agricultural discharges. The WDRs as modified do not contain time schedules with a high likelihood of success of reaching water quality objectives in a time that is no longer than reasonable, as the Nonpoint Source Policy requires and as the first cause of action alleges. Likewise, the unbounded delay before the State Board ultimately acts to impose a valid time schedule unlawfully amends the Nonpoint Source's specific time schedule requirement into one that is indefinite.

a. The 2023 State Board Order Violates the Nonpoint Source Policy Requirement that WDRs Include a Time Schedule with a High Likelihood of Success.

The Regional Board specifically found that relying on the nitrate reduction approaches from previous orders—"management practice implementation, assessment, and improvement"—would "not have a high likelihood of success" (CC136), and for this reason included time schedules for achieving numeric standards that are ultimately enforceable as permit violations (CC12, 136-37).

Yet the 2023 State Board Order eliminated the enforceability of those time schedules and prohibited the Regional Board from adopting any other numeric standards (or any other "new regulatory approach")—even if recalculated to conform to the State Board's direction. (SB1346-52.) This decision limits the Regional Board to using strategies from prior orders that had it already determined *did not result in decreased discharge.* It does so without putting forth any evidence to show why using this approach again, now, would result in an adequate time schedule with a high likelihood of success.[13] As a result, the 2023 State Board Order violates the Nonpoint Source Policy's requirement that WDRs include a time schedule with a "high likelihood" of reaching water quality objectives, not to mention the Court of Appeal's direction to the State Board to do so. (CC32830-32; *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at pp. 368-72.)

Without the ability to enforce the time schedules, no remaining requirement that the 2023 State Board Order allows the Regional Board to impose has a "high likelihood" of achieving water quality objectives. Under the 2023 State Board Order, when a discharger applies the extreme amounts of fertilizer that exceed the application standard, the Regional Board may only require education. (SB1349; see CC226-30, 18991-19001.) If a grower exceeds the A–R standard (thus discharging unacceptable levels of nitrate), the only permissible consequences are education and INMP certification.[14] (SB1350-51; see CC230-33.) Yet nearly all of these requirements existed in one form or another in the earlier orders and resulted in no meaningful nitrogen reductions.[15] The

[13] The State Board has banned any "new regulatory approach focused on nitrogen impacts to water quality." (SB1349.) Under the 2023 State Board Order, the Regional Board may not innovate a new and different regulatory approach. Its only permissible approach would be to require an approach within the four corners of the ESJ Order, namely to require a Groundwater Quality Management Plan, the plan that provides the basis for the time schedule in the ESJ Order. (CC33571-72.) But this approach, in light of the evidence that such an approach had no effect on nitrogen application in the Central Coast, threatens to improperly "substitute" management practice implementation for "meeting water quality requirements." (CC32831.)

[14] Other regulatory options are theoretically available, including "additional or improved management practices, and increased monitoring or reporting," but not until the Regional Board recalculates the A–R standard in accordance with State Board direction. (SB1350.) And the State Board never explains how these could justify a high likelihood finding.

[15] The one exception relates to INMPs. The INMP is a planning exercise for nitrogen and irrigation usage, an enhanced version of the Farm Plan that had been required since Ag Order 1.0, (SB2480, 2484 (Ag Order 1.0), SB2446 (Ag Order 2.0), CC34751-58 (Ag Order 3.0)) with additional nitrogen removal reporting. (CC22, 25-26.) The 2023 State Board Order puts forth no

evidence in the record demonstrates that exceeding the Regional Board's now-stricken numeric standards creates a very high risk of discharge (CC226-32), yet the 2023 State Board Order leaves the Regional Board without sufficient authority to make those discharges stop.

Nor will the future convening of an expert panel—with state guidance to potentially be issued thereafter—solve the State Board's violation of the Nonpoint Source Policy. (SB1352-53, 1369.)[16] The State Board put neither action on a "specific time schedule," and gave no "quantifiable milestones" towards expert panel completion or state guidance. And because the State Board had not even decided what it would ask the expert panel (SB1353), it certainly could not say that any approach it may decide on in the future will have a "high likelihood" of success.

b. The 2023 State Board Order's Deferral of Action to the Indefinite Future, and Forbiddance of Regional Board Action in the Meantime, Is an Unlawful Amendment of the Nonpoint Source Policy.

As alleged in the Petitioners' second cause of action, the 2023 State Board Order has unlawfully amended the Nonpoint Source Policy without following the required procedures for doing so. Specifically, the State Board altered the Policy's required time schedule from one that requires compliance in the minimum reasonable amount of time to one that is effectively indefinite.

State water policies are adopted and may be amended only pursuant to procedures specified in Water Code sections 13140, 13144, 13147, and 13149.2, and Government Code section 11353. (See *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at p. 370; see also *State Water Resources Control*

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evidence that the preparation of INMPs (or their certification, where that may be required as a consequence for failing to meet the recalculated discharge standards), will achieve water quality objectives on a specific timeline.

[16] The State Board's can-kicking approach here is reminiscent of similar tactics held unlawful in *State Water Resources Control Board Cases (*2006) 136 Cal.App.4th 674, 725-34 (*State Board Cases*) and *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at pp. 369-70. In both those cases, the State Board, in quasi-adjudicative proceedings, delayed or avoided requiring immediate compliance with provisions of quasi-legislative enactments (a basin plan in *State Board Cases* and the Nonpoint Source Policy in *Monterey Coastkeeper*). In *State Board Cases*, *supra*, 136 Cal.App.4th at p. 726, the court pointed out that an "experimental," "staged" approach that resulted in delayed implementation of the basin plan requirements still violated those requirements. And in *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at p. 369, the court rejected the State Board's suggestion that the "complex" nature of Central Coast nitrate pollution justified a program that lacked specific time schedules. Here, the State Board's delay to allow time for further data gathering and scientific development is equally unlawful. (SB1352-53, 1357.)

*Board Cases (*2006) 136 Cal.App.4th 674, 732 [State Board may not cause "de facto amendment" of basin plan and its objectives by refusing to take action identified as necessary to achieve those objectives].)

The 2023 State Board Order states that no "new regulatory approach" may be adopted until the convening of an expert panel and subsequent State Board guidance following that panel's report. (SB1349, 1352-53.) Such a mandate converts the Nonpoint Source Policy's requirement that time schedules must "not be longer than that which is reasonably necessary" to achieve water quality objectives (CC32832) into one that is indefinite and open-ended.[17] (See *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at p. 369 [a requirement of only "vague and indefinite improvement" fails to implement an adequate time schedule requirement].)

4. The 2023 State Board Order Violates the Antidegradation Policy, and Petitioners Should Prevail on Their Fourth Cause of Action.

a. The 2023 State Board Order Violates the Antidegradation Policy Because Better Practical Treatment and Control Exists, and Such Methods Would Be to the Maximum Benefit to the People of the State.

The modified WDR issued by the State Board must comply with the Antidegradation Policy's requirement that the WDR contains the best practical treatment or control (BPTC) and is calculated to achieve the highest quality associated with the maximum benefit to the people of the state.[18] (*AGUA*, *supra*, 210 Cal.App.4th at pp. 1278-79.) The modified WDR fails this test.

The record shows that the numeric limits and enforceable timelines included in Ag Order 4.0 are better practicable treatment and control options than those in the modified WDR. Scientific evidence ties high levels of nitrogen application to nitrate discharge (CC226-30, 18990-19004), thereby justifying the application limits contained in Ag Order 4.0. Because those limits were set at a level that most growers can achieve (CC229-30), such limits are also "practicable." Similarly, research demonstrates that nitrogen discharge, calculated by subtracting R from A, causes ongoing

[17] For the same reasons, this amendment also constitutes a violation of Water Code section 13149.2, subdivision (b), because the State Board failed to make the required findings before amending the Nonpoint Source Policy's requirements, as alleged in the sixth cause of action.

[18] The Antidegradation Policy applies because Ag Order 4.0 authorizes discharges with potential to degrade high quality water; a fact that the 2023 State Board Order does not dispute. (CC143-48; *AGUA*, *supra*, 210 Cal.App.4th at p. 1270.)

pollution. (CC230-32, 18416, 22087, 25722, 25715, 25742.) The limits proposed in Ag Order 4.0—which are based on A–R—will drive down discharge over time, becoming stricter as practices and technology improve. (CC230-34.) The enforceable timelines and numeric limits contained in Ag Order 4.0 represented the BPTC options, and the State Board's removal of those options, without replacing them with an equal or better level of BPTC, violated the Antidegradation Policy. The lesson of the earlier Ag Orders is that non-enforceable, non-quantifiable measures did not result in decreased discharge. (CC84-85.) These failed measures are not the "best" treatment and control. (CC32680.) For the State Board to insist that they are is against the weight of the evidence in the administrative record. (*C.V.C. v. Superior Court* (1973) 29 Cal.App.3d 909, 919 ["[D]iscretion is abused if, after independent consideration of the evidence, the court determines that the agency's decision is contrary to the weight of the evidence."].)

For the same reasons, retreading a demonstrably failed approach is not to the "maximum benefit of the people of the State" when a more robust approach is available, scientifically supported, and feasible to implement. (*AGUA*, *supra*, 210 Cal.App.4th at pp. 1279-85; CC32680.) The Court should grant the petition for a writ of mandate on the first and fourth causes of action.

b. The ESJ Order's Antidegradation Analysis Does Not Apply.

Further, the ESJ Order's Antidegradation analysis is not portable to the Central Coast. Antidegradation findings—while permitted to be made at a level coarser than that of individual dischargers (see CC33581), still must done on a case-by-case basis, specific to "affected community" and the factual record underpinning the order being implemented (CC32709, 32791; see *ELF*, *supra*, 89 Cal.App.5th at p. 495). Likewise, *AGUA* states that the Board should consider "current technologies" when determining what constitutes BPTC.[19] (*AGUA*, *supra*, 210 Cal.App.4th at p. 1282.) New facts require new analysis.

[19] The ESJ Order, for its part, also observes that "irrigated lands regulatory programs across the state will continue to evolve as directed by this order, resulting in substantially more data and an improved understanding about the impacts to water quality and the methods to control those impacts. As the data and our understanding evolves, of course, so too must the regional water boards' analyses of maximum benefit and best practicable treatment or control." (CC33584.) This principle—that the concept of maximum benefit and BPTC must evolve as new information is developed—echoes State Board guidance, which emphasizes the "case-by-case" nature of these analyses. (CC32791.)

As a result, a compliant analysis must include a detailed balancing of the costs both to agriculture and specific affected communities, along with the technological and scientific progress that occurred between the adoption of the ESJ Order and that of Ag Order 4.0, including six years of TNA data (CC226), development of nitrogen coefficients (CC29, 164-65, 420; CC32129-44), and the EU's progress on agricultural nitrate control (CC233-34, 20811, 22035, 22335).[20] This information bears on what is "best," what is "practicable," and the ultimate balance of benefits from any given scheme. As a result, the State Board cannot simply import the ESJ Order's approval of the Central Valley Regional Board's antidegradation analysis. (See CC33580-84, 33672-85.)

Further, the ESJ Order is not a template for a full regulatory program. The "primary vehicles" for protecting water quality in the Central Valley—the GQMPs and their associated time schedules—are not precedential. (CC33557-72.) Nor is the Management Practice Evaluation Program designed to evaluate the effectiveness of the GQMPs' requirements. (CC33568.) The ESJ Order's precedential requirements cannot simply be copy-pasted to the Central Coast.[21]

5. The 2018 ESJ Order Does Not Prohibit the Strategies Contained in Ag Order 4.0.

The 2023 State Board Order states that the ESJ Order is precedent that prohibits the use of numeric standards and enforceable timelines, and which requires the State Board to strip them from Ag Order 4.0. (SB1343-44, 1348-53.) This argument fails.

a. The 2018 ESJ Order Did Not Precedentially Prohibit Enforceable Numeric Standards for Nitrogen Application and Discharge.

As this Court has previously recognized, Section 11 of the ESJ Order does not, by its terms, prohibit the Regional Board from adopting enforceable numeric standards. (See Demurrer Ruling at p. 7.) In claiming the opposite, the 2023 State Board Order relies on the following passage from

[20] The EU schemes contain limits on nitrogen surplus and mandatory management practices, and have resulted in decreases in nitrogen loading. (CC234.) Thus, the ESJ Order's statement that it is the most protective existing regulatory scheme may no longer be true. (See CC33584.)

[21] As a final point, the State Board has placed the Regional Board in a difficult position on remand: because the State Board prohibited enforceable numeric standards, and because the State Board never repudiated any of the factual findings underlying the Regional Board's antidegradation findings, the Regional Board will be forced to contradict its own previous findings in order to adopt a revised WDR that is consistent with the State Board's direction. (See CC137-59.)

the ESJ Order: "If we move forward with a new regulatory approach in the future, we expect to do so only after convening an expert panel that can help evaluate and consider the appropriate use of the acceptable ranges for multi-year A/R ratio target values in irrigated lands regulatory programs statewide." (SB1343; CC33578.)[22]

But the ESJ Order explicitly limits its own precedential effect and excludes Section 11. The ESJ Order expressly states that "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, italics added.) The State Board stated that it would "indicate" which elements of the Order were precedential, as occurs numerous times in the 2023 State Board Order.[23] (CC33513; see, e.g., CC33533-36, 33538-40, 33544, 33546, 33555, 33557.) But Section 11 of the ESJ Order, which is at issue here, does not contain any such language. Moreover, Section 11 contains direction only to the Central Valley Regional Board. In light of the language stating that precedential requirements would be specifically identified, the failure to identify Section 11 as precedential compels the interpretation that it is not.

Moreover, the plain language of the above passage does not preclude the Regional Boards from adopting a numeric standard. The passage states that the State Board "expect[s]" that "we" (i.e., the State Board) will use the A/R ratio as a regulatory approach only after convening a panel. (CC33577-78.) This is not a command, but an expression of what the State Board intends to do in the future. As such, it is precatory, and "precatory statements . . . do not impose any affirmative duty" on government actors. (*Tomra Pacific, Inc. v. Chiang* (2011) 199 Cal.App.4th 463, 491; see *In re Marti's Estate* (1900) 132 Cal. 666, 671 [" '[A]n expression of hope or confidence or

[22] Notably, the 2023 State Board Order's prohibition on the Regional Board's numeric standards relies on the ESJ Order's discussion of the A/R ratio. But Ag Order 4.0's approach is premised not on the A/R ratio, but on the A–R difference or A alone. The ESJ Order is careful to distinguish between a ratio and a difference; the use of the A/R ratio in the above passage from the ESJ Order is not an accident. (CC33540-44.) The 2023 State Board Order ignores this distinction, asserting that a discussion once limited to situations where the A/R ratio was relevant now applies to *any* "new regulatory approach." (SB1349.)

[23] Petitioners do not dispute that the ESJ Order contains precedential requirements, only that sections II.A.4, II.A.5, and III.1 of the 2023 State Board Order strike down features of Ag Order 4.0 that do not fall within that precedential scope.

expectation, does not import a command.' [Citation.]"].) In the absence of such a command, the Regional Board was not under any mandate preventing it from adopting numeric standards in the meantime. (See *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 910-11 ["[I]n order to impose a mandatory duty on a public entity, . . . ' "the mandatory nature of the duty must be phrased in explicit and forceful language." ' [Citation.]"].)

Finally, Section 11 of the ESJ Order does not control the Regional Board's actions here because that portion of the order was specific to the facts and circumstances therein. An enactment's precedential value is "coextensive only" with similar facts. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 734.) Compared to the situation in the Central Valley in 2018, by 2021, the Central Coast had higher pollution levels, a more robust regulatory program with much better data, and a history of iteratively attempting—and failing—to regulate nitrate through reporting and management practice implementation. (CC84-85, 226-27, 232-33, 241, 22131, 22141.) The Central Coast also had nitrogen removal coefficients in place along with new research on nitrate discharge and control. (CC29, 164-65, 233-34, 420, 32129-44.)

On these differing facts, Section 11 of the ESJ Order had no precedential value. The Regional Board complied with many of the ESJ Order's designated precedential components (CC160-71), but when it came to the critical question of enacting requirements that would have a "high likelihood" of moving Central Coast agriculture towards compliance on a quantifiable timeline, the Regional Board reasonably chose to treat Section 11's nonbinding language as a regulatory floor, not a ceiling, and so established enforceable numeric standards (CC171-72; 33577-78). Although the State Board in 2018 had believed that it was "premature *at this point* to project the manner in which the multi-year A/R ratio target values might serve as regulatory tools" (CC33578, italics added), by 2021, the Regional Board could conclude that it was no longer premature to do so, given the significantly greater information at its disposal. The 2023 State Board Order brushes off this interpretation of the ESJ Order, without analysis, as "simply not appropriate." (SB1349.) But the Regional Board acted appropriately in these circumstances: Ag Order 4.0 placed necessary limits on ongoing pollution and did not contravene the ESJ Order in doing so.

b. The State Board's Interpretation of the ESJ Order as Applied to Ag Order 4.0 Is Not Entitled to Deference.

The Court should not defer to the 2023 State Board Order's current interpretation of the ESJ Order as applied to Ag Order 4.0 because the State Board did not possess a clear and consistent interpretation of the ESJ Order during the pendency of Ag Order 4.0. An agency's "vacillating position warrants no deference." (*Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 178.) Similarly, when an agency's construction "flatly contradicts" its original interpretation, it is not entitled to "significant deference." (*Henning v. Industrial Welfare Commission* (1988) 46 Cal.3d 1262, 1278; see *De La Torre v. Cal. Horse Racing Bd.* (2017) 7 Cal.App.5th 1058, 1071-72 [no deference to an agency's interpretation of its own regulation on grounds that it changed its mind regarding the duration of its applicability].) If the ESJ Order were as clear as the 2023 State Board Order implies it is, one would expect the State Board's lawyers to have consistently articulated a single interpretation of the order during the lengthy Ag Order 4.0 proceedings. Yet, State Board attorneys alternatively told the Regional Board that it was permitted to adopt enforceable numeric limits and could deviate from the ESJ Order's precedential components when facts differed, (CC6114 [audio at 9h1m, Hunt Dec. Ex. 6 at p. 258]; 6158 [audio at 0h28m, Hunt Dec. Ex. 7 at pp. 19-20]), described key aspects of the ESJ Order as a "zone of legal ambiguity" (CC6158 [audio at 2h14m-24m, Hunt Dec. Ex. 7 at pp. 88-98]; see CC55-57), noted that application limits did not come within Section 11's language (CC6158 [audio at 3h15m, Hunt Dec. Ex. 7 at pp. 127-34]; 10230 [audio at 0h35m, Hunt Dec. Ex. 9 at pp. 27-28]), and stated that the Regional Board could implement "additional actions" for target violations (6158 [audio at 2h10m, Hunt Dec. Ex. 7 at p. 90]), before abruptly reversing their position in the final 2023 State Board Order (see SB1348-53.).

c. Even If the 2018 ESJ Order Did Facially Prohibit the Numeric Standards, Such a Prohibition Would be Invalid.

Even if Section 11 of the ESJ Order had precedential value here—which it does not—the State Board may not use an adjudicatory order such as the 2023 State Board Order (see SB1365, *California Assn. of Sanitation Agencies*, *supra*, 208 Cal.App.4th at p. 1453) to overturn, modify, or violate state water policy (*State Board Cases*, *supra*, 136 Cal.App.4th at pp. 732-34 [Board's power to act in an adjudicatory water rights proceeding "is constrained by the terms of the plan it is

implementing"]; *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at p. 370). This restriction applies whether or not the State Board designates a decision as "precedential" via Government Code section 11425.60: "An agency may not by precedent decision revise or amend an existing regulation or adopt a rule that has no adequate legislative basis." (Cal. Law Revision Com. com., West's Ann. Gov. Code (2025) foll. § 11425.60.)

As discussed above, the State Board Order modifies Ag Order 4.0 such that it violates state water policies. The State Board may not, however, exempt a WDR from these requirements via a permitting action such as the 2023 State Board Order. The Board's actions improperly "delay, diminish, or dilute" the policies' requirements. (*Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at p. 370; see SB1352-53 [delay to convene expert panel].) Here, the portion of the 2023 State Board Order at issue, i.e., the provisions that modify Ag Order 4.0's requirements, is an adjudicatory action of the State Board, as established above. Therefore, this adjudicatory action must comply with, and may not amend or fail to implement, the Board's binding legislative commands, including the Nonpoint Source and Antidegradation Policies. Even if the ESJ Order restricted the Regional Board's discretion, the State Board was still bound to leave the Central Coast with a WDR that meets the Policies' requirements and is supported by findings.

VI. PETITIONER'S SURFACE WATER CLAIM AGAINST REGIONAL WATER BOARD (FIFTH CAUSE OF ACTION)

A. Factual Background

1. Surface Water Contamination in the Central Coast

a. Surface Water Quality Objectives and Beneficial Uses in the Central Coast Region Are Not Being Achieved or Protected.

The Central Coast region is home to "some of the most significant biodiversity of any temperate region in the world." (CC86.) The Basin Plan sets forth 23 beneficial uses for inland surface waters in the Central Coast region, such as Wildlife Habitat and Fishing. (CC34067-69.) To achieve the "reasonable protection" of these beneficial uses (CC34089), the Basin Plan establishes water quality objectives for inland surface waters (CC34089-94; see also CC176-83 [Ag Order 4.0 findings listing objectives and beneficial uses]).

Data show that these beneficial uses and water quality objectives are not being protected or

achieved and that intensive agriculture is a primary cause. (CC4812 [finding that nitrates, which "degrade water quality and impair beneficial uses for surface water and aquatic habitat," as well as "pesticide pollution," are "widespread," while many waterbodies exceed toxicity standards for aquatic life or are impaired by turbidity caused primarily by sediment loading from irrigation runoff].) The Regional Board's expert Staff summed it up in 2018: in the Central Coast region's agricultural areas, "[m]any parameters still do not meet water quality objectives," there are "[m]any impairments," and "[o]verall water quality conditions are not improving." (CC32510-11.) Ag Order 4.0 extensively detailed this contamination of surface waters. (CC256-84.)

b. Riparian Areas are Essential for Achieving Surface Water Quality Objectives and Protecting Beneficial Uses.

The U.S. Environmental Protection Agency (U.S. EPA) defines "riparian areas" as a "vegetated ecosystem along a water body through which energy, materials, and water pass." (CC28215.) Wetlands, a subset of riparian areas, are "areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support . . . a prevalence of vegetation typically adapted for life in saturated soil conditions." (*Ibid.*) Riparian areas "play an important role" in protecting beneficial uses and ensuring waterbodies achieve water quality objectives related to temperature, dissolved oxygen, and turbidity. (CC293.) They keep sediment, nutrients, and pesticides from entering surface waters and stabilize the banks of rivers, streams, and lakes. (CC294-96, 300, 32084.) Since nutrients are almost always transported by sediment, decreasing sediment loads in waters directly reduces nutrient concentrations. (CC32084.) Riparian areas also break down nutrients as they move towards surface waters, primarily through nitrogen uptake by plants and conversion to inert nitrogen gas by microorganisms. (CC297, 29949, 32486.) Riparian areas are the "most efficient place to remove pollutants and nutrients from watershed discharges." (CC295-96.)

Riparian areas also directly protect beneficial uses by, for example, providing high-quality habitat for aquatic and terrestrial wildlife. (CC32484, 6159 [audio at 1h7m, Hunt Dec. Ex. 8 at p. 46].) Riparian vegetation shades water channels, thereby cooling them. (CC29945). Shading yields higher dissolved oxygen levels and minimizes temperature fluctuations that threaten aquatic wildlife. (CC299, 24102, 29945). Riparian vegetation also falls into waterways, becoming part of

the food web for the aquatic ecosystem. (CC299, 20803, 29945.) Larger debris and roots slow the pace of streams and provide structural habitat for fish and other wildlife. (CC18431, 20803, 32488.)

The administrative record is replete with scientific articles, reports, technical manuals, and expert commentary concerning riparian areas' central role in attaining surface water quality objectives. (See, e.g., CC18422, 20607, 20728, 20801, 20863, 21640, 22517, 22543, 23353, 24100, 24788, 24807, 29262, 29293, 29931, 30101, 30181, 31801, 32076.) These studies vary only in their nuances. For example, some discuss the value of riparian areas generally (but still definitively),[24] while others discuss their efficacy in precise terms.[25] Expert commentary also establishes the importance of riparian areas in protecting surface water quality.[26] Guidance and statements from federal agencies, also before the Regional Board and in the record, say the same thing. (See, e.g., CC28085, 28197, 28560, 31810 [federal law], 13812 [U.S. Fish & Wildlife Service]).

c. Riparian Areas in the Central Coast Region Were Lost and Degraded Under Ag Orders 2.0 and 3.0, Contributing to Poor Surface Water Quality.

Despite their undisputed value to surface water quality, riparian areas are largely absent (and disappearing) from the Central Coast region. (CC291-92, 300.) Various maps show the limited extent and heavily degraded condition of the region's few remaining riparian areas and wetlands. (See, e.g., CC32158, 32160-61, 32166-68, 32492; see also CC34087 [map of region's hydrologic units].) The loss and degradation of riparian areas is especially acute in agricultural areas. Less than

[24] See, e.g., CC29948 ("Buffers help protect water quality in wetlands and surface waters . . . ."); CC23829 ("Riparian vegetation is critical to the quality of in-stream habitat and aids significantly in maintaining aquatic life . . . .").

[25] See, e.g., CC24814 ("The calculated nitrogen retention by the riparian forest was 89% . . . ."); CC24103 ("[T]he results from numerous field studies . . . indicate that fairly narrow strips of riparian vegetation can reduce sediment input to surface water."); CC24103 (literature review shows that "forested [vegetative buffer strips] reduced N[itrogen] . . . in surface runoff by 78-98%").

[26] See, e.g., CC37467-71 (American Rivers California Program Director Dr. Amy Merrill summarizing for the Regional Board "over 40 years" of data collection on the benefits of riparian areas for surface water quality and explaining that, "if the goal is to maintain intensive agricultural production in the region while protecting healthy ecosystems and water resources, establishment of operational and riparian setbacks is absolutely essential"); CC37467 (Dr. Merrill stating that "requiring vegetated setbacks along waterways . . . in all agricultural lands is really critical"); CC16951-53 (American Rivers California River Restoration Science Director Dr. Lisa Hunt discussing importance of riparian buffers in comments to the Regional Board).

ten percent of irrigated agricultural lands in the Central Coast region contain any riparian vegetation, and almost all of that is scant or degraded. (CC291-92, 32487-91; see also CC32154-72.)

Much of this degradation persisted under Ag Orders 2.0 and 3.0, even as growers were complying with them. Both orders merely prohibited the removal of "existing, naturally occurring" riparian vegetation, and only as "necessary to minimize the discharge of waste." (CC34751; see also CC4823-24, 10234 [audio at 5h02m, Hunt Dec. Ex. 13 at pp. 5-7].)

The results were disastrous. For example, in one area in the Central Coast region (Salinas):

> Between 2005 and 2012, many growers converted non-crop vegetation to bare ground buffers. Declines in riparian area (9 percent) . . . were observed between 2005 and 2012, along with a 30 percent increase in bare ground (Karp, 2015). Research conducted in 2013 revealed that between 2005 and 2009, 13.3 percent of riparian and wetland vegetation along the Salinas River was either converted to bare ground or crops, or was observably altered and degraded and 8.2 percent of existing riparian and wetland vegetation was lost in 20 Salinas River Valley wildlife corridors (Gennet, 2013).

(CC300-01; see also CC301 [stating that 979 acres of riparian and other areas were converted to bare ground or croplands "from 2005 to 2012 in the Salinas Valley alone"].) These dismal results were corroborated by the Central Coast Wetlands Group's Riparian Rapid Assessment Methodology (RipRAM), a comprehensive model for measuring riparian-area health. (CC20333.) It showed "poor riparian habitat condition in the lower Salinas and Pajaro River watershed areas, where agricultural land use is prevalent." (CC18951.) These and other data led the Regional Board's Staff to conclude, in March 2018, that "degradation and loss of riparian and wetland habitat has occurred throughout our region and . . . continues." (CC38078 [audio at 0h17m, Hunt Dec. Ex. 2 at p. 13].)

Given these facts, it is no surprise that the Regional Board found in Ag Order 4.0 that, even though "Agricultural Orders 2.0 and 3.0 explicitly required management practice implementation, assessment, and improvement . . . water quality conditions have not improved in terms of achieving water quality objectives and protecting beneficial uses." (CC123-24.) Critically, even where water quality objectives were being achieved under Ag Order 3.0, the beneficial uses associated with riparian areas (aquatic habitat, wildlife habitat, etc.) were not being protected. (CC6159 [audio at 1h06m, Hunt Dec. Ex. 8 at pp. 44-47].) Accordingly, the riparian areas that remain in the Central Coast region are insufficient to protect at least 13 of the Basin Plan's 23 beneficial uses, including,

for example, Fresh Water Replenishment, Warm Fresh Water Habitat, and Migration of Aquatic Organisms. (CC293-94; see also CC32501-12 [Staff presentation on Central Coast region's poor water quality in irrigated agricultural conditions alongside "degraded" riparian and wetland areas].)

2. The Regional Board's Regulatory Steps

a. Ag Order 4.0's Early Administrative Process: Riparian Setbacks Were Essential to Achieve Water Quality Objectives and to Protect Beneficial Uses.

Tasked with preparing a new Ag Order 4.0, the Regional Board's expert Staff entered the administrative process cognizant of three facts: (1) riparian areas are immensely, even uniquely, effective in protecting and restoring water quality and wildlife habitat; (2) those areas, and surface water quality, continued to degrade under Ag Orders 2.0 and 3.0; and (3) water quality objectives were not met, and beneficial uses were not protected, under Ag Orders 2.0 and 3.0. Staff accordingly determined that a new approach was required in Ag Order 4.0. (CC4803-04.)[27] The Board agreed that prior orders were unsuccessful, and that "a new order that relies [on] the same approach would not have a high likelihood of success." (CC136.) That new approach required protecting what was left of the Central Coast region's riparian areas while also restoring areas that had been degraded or destroyed. (See, e.g., CC10231 [audio at 5h15m, Hunt Dec. Ex. 11 at p. 32] [Staff explaining in 2020 the need for restoration]; 6159 [audio at 2h01m, Hunt Dec. Ex. 8 at p. 82] [Board Member Delgado stating in 2019 that "we need to restore them [riparian areas] as much as we can"].)

In November 2018, Staff introduced five conceptual options tables based on the water-quality challenges that Ag Order 4.0 had to tackle. (CC4802.) Table 5, entitled "Riparian habitat management for water quality protection," was Staff's attempt at requirements to protect riparian areas through prohibitions on removal of existing vegetative cover, vegetative-cover requirements, riparian and operational "setbacks" (i.e., buffers between agricultural areas and surface waterbodies, described in detail at CC6913-15), and assessments and reporting.[28] (CC4823-24.) Six months later,

[27] As early as March 2018, Staff told the Regional Board they were developing options for Ag Order 4.0 to address the failures of Ag Orders 2.0 and 3.0 related to riparian and wetland requirements. (CC32499.)

[28] We refer most frequently to the riparian and operational setbacks, but all the riparian-area management practices under consideration were important and are relevant to our arguments.

the Regional Board dedicated its entire meeting to reviewing Table 5. (CC6159, 9861.) At that meeting, Board members considered the consequences of especially of the setback provisions, including whether growers' complaints about food safety risks (due to potential contamination of crops via proximity to wildlife) could be addressed, and whether the proposed setback provisions would conflict with other regulatory agencies' actions. (CC6159.) In May 2019, Staff reiterated to the Board that establishing riparian areas "for filtration of pollutants [is] one of the most effective practices for protecting impaired water bodies." (CC6159 [audio at 1h04m, Hunt Dec. Ex. 8 at pp. 42-43]; see also CC6159 [audio at 1h08m, Hunt Dec. Ex. 8 at p. 46] [Staff stating that they had "found no other alternative other than riparian vegetation" for protecting aquatic-life beneficial uses].) To address these and other concerns, Staff developed a detailed proposal for riparian and operational setbacks (CC6142, 6155-57), and then hosted a workshop on balancing riparian protection and food safety concerns. (CC9861.) Staff also consulted with sister agencies and organizations to ensure regulatory consistency. (CC29838; see also CC29848 [2020 Staff report noting: "State level efforts have been ongoing for over 25 years. To date, these efforts have not yielded specific protective measures for riparian and/or wetland habitat."].)

b. The February 2020 Draft Order: Staff's Setbacks Proposal

In February 2020, the Regional Board published a draft order (Draft Order) and an accompanying draft environmental impact report under CEQA, which explained how the Regional Board's concerns about riparian and operational setbacks and other proposed riparian-area management practices had been addressed. (CC6371, 6873.)

The Draft Order memorialized Staff's proposal for setback requirements and the evidence supporting them. (CC7133-60.) Under the Draft Order, growers with priority-area farms could choose from four different compliance pathways, with varying options for protecting and restoring riparian areas. (CC6915-18, 7133, 7160.) These multiple compliance pathways allowed growers "flexibility and the ability to consider site-specific needs" while simultaneously allowing the Regional Board to meet its legal obligation, under the Nonpoint Source Policy, to establish a high likelihood of meeting water quality objectives. (CC7160; see also CC6159 [audio at 2h59m, Hunt Dec. Ex. 8 at p. 119] [Staff explaining that its approach was designed to "identify" and "implement

projects in" those "areas in the watershed that would benefit water quality the most"].) Sixty-five pages supported the necessity and feasibility of Staff's proposal.[29] (CC7115-80.) The Draft Order's riparian and operational setbacks would have protected 554 stream miles of surface waters while removing only 0.9% of irrigated lands from agriculture. (CC7175-76; see also CC32147-53.)

In October, 2020, Staff warned the Board: "*Riparian area management 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], italics added.)

Throughout the administrative process, Board members asked questions and raised concerns, but they largely affirmed Staff's conclusions. For example, on May 16, 2019, Board Member Young cautioned his fellow members against getting caught up in the "story of Ag" and losing sight of the Board's responsibility to protect beneficial uses. (CC6159 [audio at 4h21m, Hunt Dec. Ex. 8 at p. 175].) Mayor Delgado noted that riparian protections were "the one place where we seem to have agreement that we can work together," where "there's not a lot of opposition." (CC6159 [audio at 4h46m, Hunt Dec. Ex. 8 at pp. 191-92].) In December 2020, Vice Chair Gray recognized that there "are tremendous benefits to be reaped" from "riparian area management" (CC10234 [audio at 5h13m, Hunt Dec. Ex. 13 at p. 12]); Board Member Hunter noted that setback requirements are "a really significant element of water quality protection" (CC10234 [audio at 5h05m, Hunt Dec. Ex. 13 at p. 8]); and Board Member Johnston emphasized "the importance of [riparian protections] to water quality" (CC10234 [audio at 5h11m, Hunt Dec. Ex. 13 at p. 19]).

c. Final Ag Order 4.0: No Setback Requirements After All

The Regional Board's multi-year administrative process yielded reams of evidence, engagement of affected parties, detailed discussions between the Regional Board's expert Staff and Board members, and even buy-in from Board members themselves on the importance of protecting

[29] The U.S. Fish and Wildlife concurred with the necessity of the setback requirements, commenting that it was "extremely supportive of the proposed setback requirements. . . ." (CC13811.) The Service added that "we believe" the proposed setbacks "are not only reasonable, but *absolutely necessary*." (CC13812, italics added.)

and restoring riparian areas if Ag Order 4.0 was to achieve surface water quality objectives and protect beneficial uses. Yet, on December 10, 2020, the Regional Board decided to eliminate the riparian and operational setback and other requirements that Staff had proposed in the Draft Order.

The Board's sole justification for removing the setback requirements stemmed from one Board member's view that, despite all the process behind the proposed riparian setbacks, they presented "the most potential costs, the most legal questions, the most—I think the most potentially problematic pieces." (CC10234 [audio at 4h56m, Hunt Dec. Ex. 13 at p. 3].) The Board never heard Staff's final presentation about the setback requirements, (see CC9852, 10234 [audio at 4h55m, Hunt Dec. Ex. 13 at p. 2]), and instead instructed Staff to include in a revised order only Ag Order 3.0's prohibition on removing or disturbing riparian vegetation (CC9852, 10234 [audio at 5h18m, 5h31m, 5h56m-6h05m, Hunt Dec. Ex. 13 at pp. 15, 23, 37-44]). The Regional Board said this prohibition would be a "placeholder," with the setbacks and other requirements to be revisited at some undefined future point. (CC9852, 10234 [audio at 5h32m-49m, Hunt Dec. Ex. 13 at pp. 23, 36].) The Board gave this direction despite recognizing that riparian-area management "is a really significant element of water quality protection." (CC10234 [audio at 5h05m, Hunt Dec. Ex. 13 at p. 8] [Board member Hunter]; 10234 [audio at 5h11m, Hunt Dec. Ex. 13 at pp. 10-11] [Board member Johnston stating that the riparian "stuff is super important to surface water health"]; 10234 [audio at 5h53m, Hunt Dec. Ex. 13 at p. 35] [Board member Gray stating that riparian-area management is "extremely important in how we move forward with our water quality"].) Indeed, even as the Board's Executive Director acknowledged the Board's about-face, he reminded the Board that "having some meaningful and effective riparian area requirements [is] absolutely necessary, given the water quality impairments . . . [h]ands down it's a significant problem and we have to deal with it." (CC10234 [audio at 5h34m, Hunt Dec. Ex. 13 at p. 25].)

The Board ultimately adopted the final Ag Order 4.0 without any setback or other riparian requirements. (CC1.) The Order simply contains a prohibition on removal of existing riparian areas, almost identical to the one that had failed under Ag Orders 2.0 and 3.0. (Compare CC49 with CC34751; see also CC10293, 10331, 10234 [audio at 5h02m, Hunt Dec. Ex. 13 at pp. 6-7].)

In the findings accompanying Ag Order 4.0, the Regional Board finds "that there is a high

likelihood that this Order will achieve its stated water quality objectives." (CC125.) Yet this finding is accompanied by 28 pages of other findings on the abysmal state of surface water quality in the Central Coast region (CC254-84), followed by 21 pages of findings on the degraded condition of wetland and riparian areas and their critical role in achieving surface water quality objectives and beneficial uses (CC288-305). Among other things, the riparian findings state: "The restoration and protection of riparian and wetland areas are important for aquatic life and beneficial uses" (CC284); "[r]iparian areas play an important role in achieving numerous water quality objectives established in the Basin Plan to protect specific beneficial uses" (CC293); " 'riparian areas play a significant role in protecting water quality and reducing adverse water quality impacts . . . ' [citation] " (CC294); "[r]iparian areas play an important role in protecting several of the beneficial uses . . . [and] agricultural activities have resulted in water quality impacts that are not protective of [13 of 23] beneficial uses" (CC293-94; see also CC34067-70 [identifying the 23 beneficial-use categories]); "[h]ealthy riparian areas are integral to healthy aquatic systems . . . [and] critical to the support of steelhead trout and other sensitive and endangered species" (CC295); and "[v]egetated conservation measures are among the most effective tools available to growers for protecting and improving water quality" (CC303; see also CC135 [finding that U.S. EPA's CZARA Nonpoint Source Pollution Guidance "describes how USEPA determined that the protection of riparian and wetland areas should be included as management measures"]).

No finding explained how the Board reached its conclusion to maintain its previous, failed approach to riparian setbacks. (See CC284-305.) And nothing in Ag Order 4.0 or its accompanying findings rebutted or even acknowledged Staff's earlier and consistent view that, even if Ag Order 4.0 had "all of the other components of this order in place related to groundwater and surface water, we still could not be protective of beneficial uses" without the riparian setbacks and other requirements that Staff had proposed in the Draft Order. (CC10231 [audio at 4h39m, Hunt Dec. Ex. 11 at p. 8]; see also CC6159 [audio at 1h08m, Hunt Dec. Ex. 8 at p. 46] [Staff stating in 2019 that they had "found no other alternative other than riparian vegetation" for protecting aquatic-life beneficial uses].) Thus, the Regional Board ended exactly where it had started four years earlier—without effective riparian setbacks—despite thousands of pages of evidence unambiguously

showing that riparian and operational setbacks would be essential to Ag Order 4.0's success.

In their May 17, 2021, petition for review to the State Board, Petitioners challenged the Regional Board's adoption of Ag Order 4.0 without setback requirements, and thus its failure to satisfy its legal obligations under Key Element 2 of the Nonpoint Source Policy. (SB94-95, 101, 108.) The State Board did not address this element of the petition for review in the 2023 State Board Order, thereby leaving intact those elements of Ag Order 4.0 related to riparian areas and surface water protections. (SB1337.)

B. Argument

1. The Regional Board Abused Its Discretion in Concluding That Ag Order 4.0 Satisfies Nonpoint Source Policy Key Element 2.

Ag Order 4.0 must be consistent with the Basin Plan. (§ 13263.) The Basin Plan must conform to state water policies, including the Nonpoint Source Policy. (§ 13240; see also § 13369 [requiring the State Board to "prepare a detailed program for the purpose of implementing the state's nonpoint source management plan"].) The Basin Plan incorporates the Nonpoint Source Policy. (CC34106-07.) Thus, the Regional Board must adhere to the Nonpoint Source Policy. Key Element 2 of the Nonpoint Source Policy mandates that the Regional Board "must be able to determine that there is a high likelihood that [Ag Order 4.0] will attain water quality requirements." (CC32831.)

The Regional Board concluded that Ag Order 4.0 satisfied Key Element 2, even though it merely incorporated Ag Order 2.0/3.0's prohibition on the removal of existing riparian vegetation and lacked additional or different riparian or operational setback requirements. (CC126-27, 16583.) As we show below, the Board's own findings and the weight of record evidence do not support that conclusion. (See *AGUA*, *supra*, 210 Cal.App.4th at p. 1281 [requiring that the Regional Board " 'bridge the analytic gap' " between the evidence and its decision, quoting *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 516.) Accordingly, the Regional Board abused its discretion.

a. The Regional Board's Findings Do Not Support Ag Order 4.0's Conclusion That the Order Complies with Key Element 2.

The Regional Board's decision to adopt Ag Order 4.0 with only the Ag Order 3.0 carryover prohibition against removing existing riparian and wetland cover is an abuse of discretion because

that decision is "not supported by the findings." (Code Civ. Proc., § 1094.5, subd. (b); *AGUA*, *supra*, 210 Cal.App.5th at p. 1281 [agency abuses its discretion when order not supported by the findings]; see also *AGUA*, *supra*, 210 Cal.App.5th at p. 1281 ["The Regional Board must ensure that sufficient evidence is analyzed to support its decision and that the evidence is in an appropriate finding."].)

Key Element 2 of the Nonpoint Source Policy required the Regional Board to find "that there is a high likelihood that [Ag Order 4.0] will attain water quality requirements." (CC126, italics and bold text omitted.) The Regional Board so concluded in a finding accompanying Ag Order 4.0: "The [Regional Board] finds that there is a high likelihood that this Order will achieve its stated water quality objectives . . . ." (CC125; see also CC126, 137.)

The Regional Board abused its discretion in reaching this conclusion. The Board found, and the record shows, that that the prior approaches of Ag Orders 2.0 and 3.0 were inadequate to protect surface water quality, including because riparian areas and surface water quality continued to degrade under those orders. (See *ante* section VI.A.I.c. [facts]; see also CC38078 [audio at 0h17m, Hunt Dec. Ex. 2 at p. 13]; CC18951 [RipRAM scores showing poor riparian habitat condition in water bodies throughout the Central Coast region]; CC293-94 [explaining that the limited riparian areas that remain are not protecting at least 13 of the Basin Plan's 23 beneficial uses].) Indeed, the Regional Board acknowledged this. (CC123-24.) Despite this unequivocal evidence, the Board chose to include in Ag Order 4.0 the prior Ag Order 3.0's mere prohibition on the removal of existing riparian cover, and only as necessary to "minimize waste discharges and protect water quality and beneficial uses." (CC49, 34751.) Nowhere in its findings does the Regional Board explain how or cite evidence showing that, given its history of ineffectiveness, this prohibition will have a high likelihood of achieving water quality objectives or protecting beneficial uses.

Conclusions and findings must be supported by evidence: the "wish is not father to the action." (*AGUA*, *supra*, 210 Cal. App. 4th at p. 1260.) In *AGUA*, the court held that a finding that WDR would not degrade surface water was unsupported because the program prohibited degradation, yet lacked the means to detect or remedy any degradation that might occur. (*Ibid.* at pp. 1269-71.) Here, there is a similar disconnect: the Board finds that Ag Order 4.0 has a high likelihood of achieving its objectives, yet Ag Order 4.0 repeats an approach that even the Board

admits has failed. An agency must do better. (See *Glendale Memorial Hospital & Health Center v. Dept. of Mental Health* (2001) 91 Cal.App.4th 129, 140 [boilerplate findings are insufficient]; *Sweeney v. San Francisco Bay Conservation & Development Commission* (2021) 62 Cal.App.5th 1, 18 [even under the most forgiving findings standard, omissions must be filled by pointing to specific record evidence].)

The record evidence conclusively shows that riparian areas continued to degrade and disappear under Ag Orders 2.0 and 3.0. (See *ante* section VI.A.1.c. [facts]; see also CC38078 [audio at 0h17m, Hunt Dec. Ex. 2 at p. 13]; CC18951 [RipRAM scores showing poor riparian habitat condition in many water bodies throughout the Central Coast region]; CC293-94 [explaining that the limited riparian areas that remain are not protecting at least 13 of the Basin Plan's 23 beneficial uses].) Indeed, the Regional Board acknowledged this. (CC123-24.) Nowhere in its findings does the Regional Board cite evidence showing that Ag Order 3.0's prohibition on the removal of existing riparian cover will have a high likelihood of achieving water quality objectives or protecting beneficial uses (and the record evidence contradicts any such claim; see *infra*).

Ag Order 4.0's other requirements do not save the high likelihood finding. (See CC16583; see also CC260.) The evidence adduced over four years conclusively proved Staff's warning that, even if Ag Order 4.0 had "all of the other components . . . in place related to groundwater and surface water[, it] still could not be protective of beneficial uses" without the riparian and operational setback requirements that Staff had proposed in the Draft Order. (See *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 866 [in record cases, "the opinion of staff has been recognized as constituting substantial evidence"]; CC10231 [audio at 4h39m, Hunt Dec. Ex. 11 at p. 8]; see also CC6159 [audio at 1h08m, Hunt Dec. Ex. 8 at p. 46] [Staff stating that they had "found no other alternative other than riparian vegetation" for protecting aquatic-life beneficial uses].) In other words, even with Ag Order 4.0's other management practices, from Farm Water Quality Management Plans to implementation work plans to reporting (see CC126-27 [summarizing these and other practices]), the Order still could not satisfy Key Element 2.

Similarly unconvincing is the Board's response to comments on Ag Order 4.0 that growers will voluntarily install riparian setbacks. The Board cites no evidence that growers will do that, and

the record evidence strongly suggests that few of them will. According to the Final Environmental Impact Report, under Ag Order 3.0, "relatively few ranches/irrigated acres" installed filter strips, vegetated treatment, or similar systems to reduce sediment or pesticides in runoff. (CC12800; see also CC12796 [only 14 percent of total reporting acreage for pesticides]; CC12798 [only 17 percent for sediment].) No growers installed such systems to reduce fertilizer in runoff. (CC12792.) Not coincidentally, water quality standards were achieved for only eight percent of reporting acres for nutrients and sediment (CC12792, 12798), and only 10 percent for pesticides (CC12796). The Board did not find that these abysmal participation rates and results will be different under Ag Order 4.0. (See CC6439 [saying only that it "may be necessary for more ranches to implement some of these more involved (as well as likely more efficacious) management practices"].)

Thus, the Regional Board's own findings and analysis do not support its conclusion that Ag Order 4.0 satisfies Key Element 2 of the Nonpoint Source Policy, especially given the Board's numerous contrary findings about the failures of Ag Orders 2.0 and 3.0 and the critical importance of riparian areas in protecting surface water quality. The Board, in short, failed to " 'bridge the analytic gap.' " (*AGUA*, *supra*, 210 Cal.App.4th at p. 1281 [quoting *Environmental Protection Information Center*, *supra*, 44 Cal.4th at p. 516]; see also *Southern Cal. Edison Co*., *supra*, 116 Cal.App.3d at p. 759 [in issuing WDRs, board must "enunciate its reasoning"].)

b. The Record Shows That Ag Order 4.0 Does Not Have a High Likelihood of Achieving Surface Water Quality Objectives.

Even if the Regional Board's findings were sufficient to support the Board's conclusion that Ag Order 4.0 has a high likelihood of achieving surface water quality objectives (they are not), the Board still abused its discretion because the weight of the record evidence does not support the Board's findings. (See Code Civ. Proc., § 1094.5, subds. (b), (c); see also *AGUA*, *supra*, 210 Cal.App.4th at p. 1281 ["The Regional Board must ensure that sufficient evidence is analyzed to support its decision and that the evidence is summarized in an appropriate finding."].)

The evidence in the administrative record conclusively shows three facts. First, surface water quality in the Central Coast region's irrigated agricultural areas is severely degraded. (CC252-84.) Second, riparian areas are essential for achieving surface water quality objectives and beneficial

uses, and Regional Board Staff and the Board itself understood this. (CC284-305; see *ante* section VI.A.2.a. [facts].) Third, Ag Orders 2.0 and 3.0 did not sufficiently protect riparian areas, surface water quality continued to degrade under those orders, and a new approach was necessary. (See *ante* section VI.A.1.c. [facts].)

On the basis of these facts and their underlying evidence, the Regional Board's expert Staff developed proposals for riparian and operational setbacks "based on peer-reviewed scientific/technical literature and regulatory approaches or policies at the local, regional, state, and nationwide level" (CC7155), and "validated through an analysis of RipRAM and pHAB scores" (*Ibid.*). Likewise, the time schedules for setback implementation were rooted in "[s]cientific literature, [other] regulatory approaches, and 401 Water Quality Certification projects." (CC7179.) Across 65 pages of data and scientific analysis (supported by a much larger body of evidence), Staff marshalled the data and their expertise to formulate setback widths and time schedules that best balanced fairness to growers against the Board's legal obligation to achieve water quality objectives and protect beneficial uses. (CC7115-80.) All this effort culminated only in a return to the status quo, based on Board Member direction at the eleventh hour, to only prohibit any further destruction of an already degraded and failing system of wetland and riparian cover.

The weight of record evidence therefore does not support the Regional Board's finding that "there is a high likelihood that this Order will achieve its stated water quality objectives . . . .," (CC125; see also CC126, 137), or any findings that Ag Order 4.0 will do so on account of the Order's management practices, including Farm Water Quality Management Plans, receiving water work plans, reporting, and so on (CC125-27). Staff specifically warned the Board that "[r]iparian area management 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, italics added]; see *Browning-Ferris Industries*, *supra*, 181 Cal. App.3d at p. 866 [in record cases, "the opinion of staff has been recognized as constituting substantial evidence"].) Nothing in Ag Order 4.0's findings contradicts or even acknowledges Staff's conclusion, and the rest of the record evidence reinforces it. The Regional Board abused its

discretion in adopting Ag Order 4.0 without riparian or operational setback requirements.

The Board and growers may point the Court to the Board's extended discussion, at its December 10, 2020, meeting, of why it chose to abandon riparian and operational setback requirements. (See CC10234 [audio at 4h55m, Hunt Dec. Ex. 13 at pp. 1-46]; see also CC9852 [meeting minutes memorializing the Board's decision to abandon setbacks because of "significant concerns about the[ir] very complex and controversial nature"]; CC16583 [response to comments referring to "complexity, legality, and economic burden of the requirements"].) But this discussion and related references do not support the Board's decision. Concerns about "complexity, legality, and economic burden" (CC16583) are legally irrelevant under Key Element 2, which considers only—and requires—that which is necessary to "attain water quality requirements" (CC32831). Otherwise, the Board would be "rewriting" or "amending" the Nonpoint Source Policy, which only the State Board may do pursuant to specific procedures. (Cf. *Monterey Coastkeeper*, *supra*, 28 Cal.App.5th at p. 370 ("[R]ewriting the [Nonpoint Source] Policy to delay, diminish, or dilute a requirement that is part of the policy is improper."].) Even if these concerns were legally relevant, they lack merit. Growers and Board members raised, and Staff addressed, these concerns throughout the four-year process of developing the setback requirements. (See, e.g., CC6585-87 [addressing cost concerns]; CC6616-17, 6633-35 [addressing food contamination concerns]; CC5891-93, 6454, 6475-80 [addressing legality and impact concerns]; see also CC6159, 9912, 9915.)

The weight of the evidence contradicts the Regional Board's findings that Ag Order 4.0, without riparian or operational setbacks, or other requirements to protect and restore riparian areas, has a high likelihood of attaining the surface water quality objectives set forth in the Basin Plan. The Board therefore prejudicially abused its discretion.

VII. CONCLUSION

For the foregoing reasons, the Court should grant the Petitioners' petition for a writ of mandate.

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Respectfully submitted,

Dated: February 13, 2026

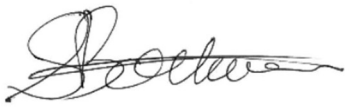
ENVIRONMENTAL LAW FOUNDATION

By: Nathaniel Kane

Attorneys for Petitioners San Jerardo Cooperative, Inc., Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, and California Sportfishing Protection Alliance

Dated: February 13, 2026

CALIFORNIA COASTKEEPER



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Dated: February 13, 2026

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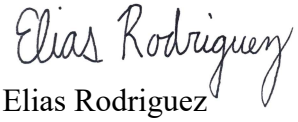
Dated: February 13, 2026

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.



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PROOF OF SERVICE

I, Elizabeth C. Trujillo, declare as follows:

I am employed with the law offices of CALIFORNIA RURAL LEGAL ASSISTANCE, INC. My business address is 3747E. Shields Avenue, Fresno, California 93726. I am over the age of 18 years of age, and not a party to this action. My electronic service address is etrujillo@crla.org.

On February 13, 2026, I served the foregoing document entitled:

PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE

by serving in the manner and/or manners described below to each of the parties herein listed:

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[X] **BY ELECTRONIC MAIL**, based on a court order, an agreement of the parties to accept service by electronic transmission, or notice of consent to electronic service, I caused such document(s) to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designation. The email address of the Electronic Service Provider, if used for service, is eservice@onelegal.com.

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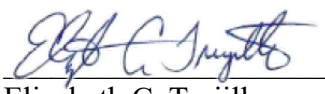
[X] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 13, 2026, Fresno, California.



Elizabeth C. Trujillo