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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SACRAMENTO**

15 MONTEREY COASTKEEPER, a program of  
THE OTTER PROJECT, a non-profit  
16 organization; CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE; a non-profit  
17 organization; ENVIRONMENTAL JUSTICE  
COALITION FOR WATER, a non-profit  
18 organization; PACIFIC COAST FEDERATION  
OF FISHERMEN'S ASSOCIATION, a non-profit  
19 trade association; INSTITUTE FOR FISHERIES  
RESOURCES, a non-profit organization;  
20 CALIFORNIA COASTKEEPER ALLIANCE, a  
non-profit organization; SANTA BARBARA  
21 CHANNELKEEPER, a non-profit organization;  
ORANGE COUNTY COASTKEEPER, a non-  
22 profit organization; and INLAND EMPIRE  
WATERKEEPER, a non-profit organization,

23 Petitioners and Plaintiffs,

24 v.

25 CENTRAL COAST REGIONAL WATER  
QUALITY CONTROL BOARD, a public agency;  
26 and CALIFORNIA STATE WATER  
RESOURCES CONTROL BOARD, a public  
27 agency,

28 Respondents and Defendants.

Case No.

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

[Pursuant to Cal. Code Proc. §§1060, 1085,  
and 1094.5; Cal. Water Code § 13330]

1 **INTRODUCTION**

2 1. Water is the lifeblood of the State of California. Citizens and wildlife alike depend  
3 on the State’s surface and groundwater and famed scenic waterways and bays, for everything from  
4 their existence to recreation. But safe and adequate water is in short supply in this arid State, and  
5 increasingly so with population growth and climate change, which intensifies drought conditions. A  
6 singular and indisputable threat to state water quality is agricultural activity, undertaken by tens of  
7 thousands of agricultural dischargers who cultivate tens of millions of acres. For too long, the  
8 principal state agencies with primary responsibility for protecting water quality have repeatedly  
9 failed to prevent water quality degradation and attain water quality standards by issuing illegal  
10 general permits or other authorizations governing agricultural pollution that fail to prevent pollution  
11 at its source – industrial farms. As water quality undisputedly worsens from agricultural activities,  
12 time is running out: Numerous citizens currently lack safe water for drinking and daily use and  
13 millions of citizens will be without drinkable water by 2050 unless the responsible state agencies  
14 begin to do their job now. Notably, the burdens of unsafe water disproportionately fall on low-  
15 income communities and such water impairs functioning ecosystems.

16 2. As the “principal” state agencies with “primary” responsibility for controlling water  
17 quality, Cal. Water Code § 13001, the State Water Resources Control Board (“State Board”) and the  
18 Regional Water Quality Control Boards (“Regional Boards”), including the Central Coast Regional  
19 Board, have a unique obligation to ensure this and subsequent generations can reliably drink and use  
20 safe water and that wildlife, too, can depend on clean water to survive and thrive.

21 3. The State Board and the Regional Boards have long known that agricultural activities  
22 significantly degrade the State’s water quality and, without tackling the problem early, solutions  
23 become more difficult as agricultural pollution accumulates in surface water and groundwater over  
24 time and also reaches rivers, streams, and other waterbodies.

25 4. Despite their legal responsibility over water quality and their acknowledgement of  
26 agricultural pollution as the primary culprit for unsafe water and of the critical need for immediate  
27 action, the State Board and the Regional Boards have repeatedly failed to discharge their duties.  
28 These failures leave the public with no assurance that the State – and the Central Coast region, in

1 particular – will achieve mandated water quality standards in any reasonable timeframe or realize  
2 the human right to water enshrined in California law and the reasonable use doctrine enshrined in  
3 the California Constitution.

4           5.       Specifically, Petitioners, on behalf of themselves, their members, and the general  
5 public, challenge the Central Coast Regional Board’s adoption on March 8, 2017, of a Conditional  
6 Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order No. R3-2017-  
7 0002 (“2017 Waiver”), and related monitoring and reporting program, Order Nos. R3-2017-0002-01  
8 through R3-2017-0002-03. These requirements govern approximately 3,000 agricultural  
9 dischargers who cultivate approximately 435,000 acres. The 2017 Waiver is substantively identical  
10 to its predecessor adopted in 2013, which this Court determined violated the Water Code and the  
11 Nonpoint Source Policy in entering judgment against the State Board in September 2015 in  
12 *Monterey Coastkeeper, et al. v. California State Water Resources Control Board*, Case No. 34-  
13 2012-80001324 (“*Coastkeeper I*”).

14           6.       Pursuant to California Water Code section 13320, Petitioners timely sought review  
15 by the State Board of the 2017 Waiver, but the State Board declined to hear that petition. The State  
16 Board’s failure to review and correct the deficiencies in the 2017 Waiver is part and illustrative of  
17 an ongoing pattern and practice whereby the State Board, through action or inaction, has declined  
18 and continues to decline to exercise its statutory oversight responsibility to ensure that agricultural  
19 discharges throughout the State comply with applicable laws pursuant to the State Board’s review  
20 and oversight duties under the California Water Code, the California Constitution, and California  
21 common law. Petitioners, on behalf of themselves, their members, and the general public, challenge  
22 this unlawful pattern and practice by the State Board.

23           7.       By this action, Petitioners seek (1) a writ of administrative mandate declaring that the  
24 2017 Waiver is unlawful and directing the Central Coast Regional Board to make revisions to bring  
25 it into compliance with the law; and (2) a writ of traditional mandate declaring that the State Board  
26 is engaged in an unlawful pattern and practice of failing to fulfill its duty to ensure that agricultural  
27 dischargers comply with the Porter-Cologne Act and other state water quality laws and directing the  
28 State Board to take appropriate and necessary action to remedy these ongoing violations of law.

**PARTIES**

1  
2           8.       Petitioners are environmental, environmental justice, and fishing organizations  
3 dedicated to water quality protection.

4           9.       Petitioner MONTEREY COASTKEEPER is a program of The Otter Project, a non-  
5 profit organization (“Coastkeeper”). Coastkeeper works to tackle water pollution problems through  
6 policy advocacy and legal tools to ensure that the interests of development, industry and urban  
7 activity are kept in line with the environmental needs and wishes of the Monterey Bay and Salinas  
8 Valley community it serves. Coastkeeper has thousands of members nationally, hundreds of whom  
9 live in the State, including in the Monterey Bay watershed, and depend upon clean local streams and  
10 shorelines in order to further their recreational, scientific, economic and social interests. Since its  
11 inception, Coastkeeper has been active in championing for effective government regulations, good  
12 public policy and an active community role in protecting freshwater and marine waters alike.  
13 Coastkeeper’s members are particularly concerned with pollution related to agricultural operations  
14 in the Monterey Bay watershed. Coastkeeper and its members are aggrieved by the 2017 Waiver’s  
15 failure to include enforceable measures and feedback mechanisms sufficient to meet mandated water  
16 quality objectives. Coastkeeper is concerned that the insufficiency of the 2017 Waiver will result in  
17 continued agricultural pollution and degradation of waters in the Central Coast Region, including  
18 severe nitrate contamination. In particular, Coastkeeper’s members who live and work in the  
19 Region have an interest in preventing and minimize agricultural pollution discharges to the Salinas  
20 River, which is already impaired by high levels of agricultural pollutants, and downstream waters.

21           10.       Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”)  
22 is a non-profit corporation organized under the laws of the State of California. CSPA has thousands  
23 of members who reside and recreate throughout California. Its members are citizens who, in  
24 addition to be duly licensed sport fishing anglers, are interested in the preservation and enhancement  
25 of California’s public trust fishery resources and in vigorous enforcement of California’s  
26 environmental laws. CSPA members have been involved for decades in public education and  
27 advocacy efforts to protect and restore the public trust resources of California’s rivers.

28           11.       Petitioner ENVIRONMENTAL JUSTICE COALITION FOR WATER (“EJCW”) is

1 a statewide coalition of grassroots groups and intermediary organizations building a collective,  
2 community-based movement for democratic water allocation, management, and policy development  
3 in California. EJCW empowers low-income communities and people of color throughout California  
4 on these issues, as it envisions all communities throughout California having access to clean rivers,  
5 streams, bays, and groundwater for personal, cultural, ceremonial, and recreational uses. The  
6 organization plays a critical bridge-building role in connecting grassroots communities and  
7 statewide policy advocates across California. For example, it advocated for the passage of AB 685  
8 in September 2012, the Human Right to Water bill, now codified in Water Code section 106.3.

9       12.     Petitioner PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATION  
10 (“PCFFA”) is a California non-profit trade association representing the interests of approximately  
11 1200 commercial fishing families operating through the oceans of the West Coast, most of them  
12 based in California. Many of PCFFA’s individual members derive all or part of their livelihoods  
13 from fishing activities along the California coast, including the Central Coast. The livelihood and  
14 way of life of these members depends upon the health of the State’s inshore or near-shore  
15 environment, which provides the nursery grounds for most of the species of fish and shellfish on  
16 which they depend. PCFFA has actively advocated for the clean water, healthy watersheds,  
17 biologically productive estuaries and wetlands, streams and rivers, and unpolluted oceans that are  
18 critical to PCFFA’s members, including advocacy around agricultural runoff, forestry and grazing  
19 impacts, oil drilling, and other threats to the coastal waters and marine ecosystems of California and  
20 the Central Coast. Agricultural discharges allowed by the State Board and the Central Coast  
21 Regional Board will adversely impact the interests and livelihood of PCFFA members fishing along  
22 the California coast.

23       13.     Petitioner INSTITUTE FOR FISHERIES RESOURCES is a California non-profit  
24 organization dedicated to the protection and restoration of fish resources and habitats and  
25 representing the working fishers who depend upon those fish. The Institute is committed to  
26 ensuring that environmental practices and policies designed to protect inland forests, rivers,  
27 wetlands, estuarine, and coastal ecosystems are adopted. The Institute is a leader in several  
28 restoration efforts, and the California coastal waters are a focus of its research and conservation

1 work.

2 14. Petitioner CALIFORNIA COASTKEEPER ALLIANCE (“CCKA”) is a non-profit  
3 public benefit corporation organized under the laws of the State of California and headquartered in  
4 San Francisco, California. Founded in 1999, CCKA represents ten non-profit Waterkeeper member  
5 organizations.<sup>1</sup> California Waterkeeper organizations work to protect and enhance the water quality  
6 and overall health of coastal and inland waterways for the benefit of ecosystems and communities  
7 throughout California. Collectively, CCKA’s member organizations are dedicated to the  
8 preservation, protection, and defense of the environment, and the natural resources of California  
9 watersheds and surface waters. CCKA’s member organizations work to protect the health of their  
10 local water bodies and communities throughout California, as indicated by the geographic  
11 descriptors of each Waterkeeper organizational name (*e.g.*, Los Angeles Waterkeeper). CCKA  
12 defends and expands on local matters by advocating before decision-makers on issues and programs  
13 with statewide impact and significance. To further their goals, CCKA and CCKA’s member groups  
14 actively seek Federal and State agency implementation of Federal and State environmental laws and  
15 policies, and where necessary, directly initiate administrative challenges and enforcement actions on  
16 behalf of themselves and their individual members in State and Federal courts.

17 15. Petitioner SANTA BARBARA CHANNELKEEPER (“Channelkeeper”) is a  
18 California public benefit, non-profit corporation headquartered in Santa Barbara, California.  
19 Channelkeeper is a grassroots organization that works to protect and enhance the quality of waters  
20 of southern Santa Barbara County, as well as the area’s natural ecosystems and human communities,  
21 for the benefit of its 900 members. It is dedicated to the preservation, protection, and defense of the  
22 environment, wildlife, and the natural resources of waters within southern Santa Barbara County and  
23 other receiving waters in the area. To further these goals, Channelkeeper works to ensure the  
24 implementation and enforcement of water quality and other relevant laws through a combination of  
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26 <sup>1</sup> The ten non-profit organizations that CCKA represents include: Klamath Riverkeeper, Humboldt  
27 Baykeeper, Russian Riverkeeper, Yuba River Waterkeeper, Monterey Coastkeeper, Santa Barbara  
28 Channelkeeper, Los Angeles Waterkeeper, Orange County Coastkeeper, Inland Empire  
Waterkeeper, and San Diego Coastkeeper. Collectively, the foregoing Waterkeeper organizations  
have thousands of members residing throughout California.

1 policy advocacy, water quality monitoring, and community education and engagement.  
2 Channelkeeper has been monitoring water quality throughout the Goleta Slough watershed and in  
3 other nearby streams in the Central Coast region. In particular, many of Channelkeeper's  
4 monitoring sites are directly downstream of undeveloped National Forest lands, where agricultural  
5 facilities dominate the landscape surrounding streams in the Goleta area. At these sites, stream  
6 water quality is regularly polluted with concentrations of nutrients, bacteria and suspended  
7 sediments that exceed the applicable water quality objectives. Channelkeeper members use, recreate  
8 on, and enjoy the aesthetic values of the beaches, rivers and creeks of southern Santa Barbara  
9 County, to which numerous irrigated agricultural operations discharge pollution. Channelkeeper  
10 members use and enjoy these receiving waters for recreational, scientific, aesthetic, educational,  
11 conservation and commercial purposes such as fishing, boating, kayaking, surfing, swimming,  
12 windsurfing, fish and wildlife observation, photography, hiking and aesthetic enjoyment. The  
13 discharge of pollutants, including nitrates, from irrigated agricultural operations to these waters  
14 impairs those uses.

15         16.       Petitioner ORANGE COUNTY COASTKEEPER is a nonprofit clean water  
16 organization that serves as a proactive steward of our fresh- and saltwater ecosystems. Orange  
17 County Coastkeeper and its members work collaboratively with diverse groups in the public and  
18 private sectors to achieve healthy, accessible, and sustainable water resources for the region.  
19 Orange County Coastkeeper implements innovative, effective programs in education, advocacy,  
20 restoration, research, enforcement, and conservation. Its objectives include: Build a regional,  
21 collaborative approach to watershed management; Develop water quality solutions that meet the  
22 needs of both the environment and the community; Implement actions and programs that have well-  
23 defined, measurable results; Increase environmental awareness among citizens, students, policy  
24 makers and the business community; Ensure compliance with the Federal Clean Water Act and  
25 state, regional and local environmental laws; Conduct research to identify and quantify pollution  
26 impacts, and provide sound evidence for policy and enforcement actions.

27         17.       Petitioner INLAND EMPIRE WATERKEEPER is a grassroots, non-profit water  
28 quality organization with a mission to enhance and protect the quality of the waterways within the

1 Upper Santa Ana River Watershed. This is accomplished through five program tenets: advocacy,  
2 education, research, restoration, and enforcement. Established in 2005, Inland Empire Waterkeeper  
3 is a chapter of Orange County Coastkeeper, which oversees the Orange County portion of the  
4 watershed, and is a separately licensed member of the international Waterkeeper Alliance. Inland  
5 Empire Waterkeeper's vision is to achieve a sustainable watershed free of pollution and a  
6 community of motivated water stewards to ensure swimmable, drinkable, fishable waters within the  
7 Upper Santa Ana River Watershed.

8 18. The interests of Petitioners and their members have been, are being, and will  
9 continue to be adversely affected by agricultural pollution. The continued and additional  
10 impairments to water quality and beneficial uses caused by Respondents' actions and failures to act  
11 will directly harm Petitioners' and their members' use and enjoyment of the water.

12 19. Respondent CALIFORNIA STATE WATER RESOURCES CONTROL BOARD is  
13 an agency charged by state law with the duty to protect, and the authority to regulate, water quality  
14 in California, as set forth in more detail below.

15 20. Respondent CENTRAL COAST REGIONAL WATER QUALITY CONTROL  
16 BOARD is an agency charged by the Porter-Cologne Act to regulate discharges through permits,  
17 waivers, or other orders that implement state law, including from agricultural activities, and to  
18 coordinate with the State Board to control water quality within the Central Coast region. The  
19 Central Coast region stretches from San Mateo to Santa Barbara Counties, comprising all basins,  
20 including Carrizo Plain in San Luis Obispo and Kern Counties, draining into the Pacific Ocean from  
21 the southerly boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties  
22 to the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of  
23 Rincon Creek.

#### 24 **JURISDICTION AND VENUE**

25 21. Petitioners have exhausted any and all available administrative remedies to the extent  
26 required by law.

27 22. This Court has jurisdiction over this matter pursuant to California Code of Civil  
28 Procedure sections 1060, 1085 and 1094.5 and California Water Code section 13330.





1           31.     Under the Porter-Cologne Act, the State Board is California’s primary water  
2 quality regulator and has the ultimate duty for attaining and maintaining the state’s various water  
3 quality objectives. The Porter-Cologne Act requires the State Board to coordinate its activities  
4 with each of the nine Regional Water Quality Control Boards (“Regional Boards”) so as to  
5 achieve a unified and effective water control program for California.

6           32.     One of the State Board’s duties is to formulate and implement California’s  
7 statewide water quality objectives and policies in conformity with the policies set forth in the  
8 Porter-Cologne Act. The policies of the Porter-Cologne Act mandate that (1) the quality of all  
9 state waters must be protected for use and enjoyment by the people of the State, and (2) the State  
10 must exercise its full power and jurisdiction to protect the quality of State waters from  
11 degradation.

12           33.     The State Board’s water policies also must be consistent with the Porter-Cologne  
13 Act’s goal of providing a decent home and suitable living environment for every Californian. In  
14 particular, the State Board adopted Resolution 2016-001, recognizing the human right to water as  
15 a core value and directed its realization in its programs and activities.

16           34.     Pursuant to its authority under the Porter-Cologne Act, the State Board has adopted  
17 various statewide water quality policies, including the “Policy for Implementation and  
18 Enforcement of Nonpoint Source Pollution Control Programs” (“NPS Policy”) and the “Statement  
19 of Policy with Respect to Maintaining High Quality of Water,” Resolution No. 68-16  
20 (“Antidegradation Policy”).

21           35.     The NPS Policy was adopted pursuant to California Water Code section 13369,  
22 which imposes a duty on the State Board to prepare and implement California’s nonpoint source  
23 management plan. The State Board also is responsible for California’s implementation of section  
24 319 of the Clean Water Act, 33 U.S.C. § 1329, related to the management of nonpoint sources of  
25 pollution.

26           36.     The Antidegradation Policy regulates discharges to high quality surface water and  
27 groundwater and requires that existing high quality water be maintained unless the State finds that  
28 any change will be consistent with maximum benefit to the people of the State, will not

1 unreasonably affect present and anticipated beneficial use of such water, and will not result in  
2 water quality less than that prescribed in policies as of the date on which such policies became  
3 effective.

4 37. In addition, the State Board is ultimately responsible for several other programs  
5 that reflect its general oversight duties, including without limitation :

- 6 a. California’s compliance with section 303(d) of the Clean Water Act, 33 U.S.C. §  
7 1313(d), including (1) the identification of all waterbodies within the state that do not  
8 meet water quality objectives or protect beneficial uses established in regional water  
9 quality control plans (“impaired waters”) and (2) the approval of revisions to regional  
10 water quality control plans that incorporate total maximum daily loads and/or  
11 implementation plans for such impaired waters;
- 12 b. California’s Irrigated Lands Regulatory Program (“ILRP”), which has enrolled at least  
13 40,000 growers and now covers millions of acres of agricultural land; the State Board  
14 maintains an IRLP staff that works with Regional Boards, other agencies, and the  
15 agricultural community to regulate discharges from irrigated agricultural lands;
- 16 c. The statutory requirement to evaluate, from time to time, the need for water quality-  
17 related investigations to effectively develop and implement statewide policy for water  
18 quality control and must transmit its recommendations for investigations to the  
19 Regional Boards or other affected or concerned agencies;
- 20 d. Administration of millions of dollars in grant money through the State Board’s  
21 Agricultural Water Quality Grant Program, which provides funding for projects that  
22 reduce or eliminate nonpoint source pollution discharge to surface waters from  
23 agricultural lands; and
- 24 e. Review of Regional Board annual budgets and allocation of funding to Regional  
25 Boards as necessary for their administrative expenses.

26 38. The State Board is responsible for formulating, adopting, and revising general  
27 procedures for the formulation, adoption, and implementation of water quality control plans  
28 developed by California’s nine Regional Boards. Regional water quality control plans must

1 conform to state policies set forth under the Porter-Cologne Act, including the NPS Policy and the  
2 Antidegradation Policy, and must include water quality objectives that will ensure the reasonable  
3 protection of beneficial uses and the prevention of nuisance.

4 39. In addition to formulating these statewide policies and programs, the State Board is  
5 charged with overseeing their implementation by the Regional Boards.

6 40. Although Regional Boards are charged with formulating and adopting water quality  
7 control plans for all areas within their region, the State Board must approve such plans, or  
8 amendments thereof, before they will become effective, all as part of the State Board's duties to  
9 ensure that water quality objectives are achieved and maintained. Water quality control plans  
10 must (1) conform to the policies of the Porter-Cologne Act and any other state policy for water  
11 quality control, (2) identify past, present, and probable future beneficial uses of water as defined  
12 by the Porter-Cologne Act, (3) establish water quality objectives, defined by law to mean the  
13 limits or levels of water quality constituents or characteristics necessary to protect beneficial uses  
14 and prevent nuisance, and (4) include a plan or program of implementation to achieve water  
15 quality objectives. Regional Boards must periodically review, and as appropriate revise, their  
16 water quality control plans, subject to State Board approval.

17 41. In developing a program of implementation for achieving water quality objectives,  
18 Regional Boards must include, without limitation, a description of the action which is necessary to  
19 achieve water quality objectives, a time schedule for the actions to be taken, and a description of  
20 surveillance to be undertaken to determine compliance with such objectives.

21 42. Upon submission of a Regional Board's water quality control plan, the State Board  
22 may either approve the plan or return it to the regional board for further consideration and  
23 resubmission. Upon resubmission, the State Board may either approve, or after a public hearing in  
24 the region, revise and approve such plan. The State Board also has authority to adopt water  
25 quality control plans in the first instance for such waters that require water quality standards under  
26 the Federal Water Pollution Control Act. Such plans, when adopted, supersede any regional water  
27 quality control plans for the same waters to the extent of any conflict.

28

1           43.     Regional Boards have primary responsibility, subject to the State Board’s  
2 oversight, for prescribing waste discharge requirements for any discharge to waters of the state,  
3 including groundwater. Such requirements must implement relevant water quality control plans  
4 and protect beneficial uses, and must comply with the NPS Policy and the Antidegradation Policy.  
5 Regional Boards must review such requirements periodically and may, on their own motion,  
6 revise them. A Regional Board may prescribe waste discharge requirements even when no  
7 discharge report or application has been filed by a discharger.

8           44.     The State Board also has responsibilities related to waste discharge requirements.  
9 After appropriate notice, the State Board may prescribe waste discharge requirements under the  
10 same standards applicable to the Regional Boards’ prescription of such requirements.

11          45.     The State Board or a Regional Board may prescribe general waste discharge  
12 requirements for a category of dischargers upon a determination that all of the following criteria  
13 apply: (1) the discharges are produced by the same or similar operations; (2) the discharges  
14 involve the same or similar types of waste; (3) the discharges require the same or similar treatment  
15 standards; and (4) the discharges are more appropriately regulated under general rather than  
16 individual requirements.

17          46.     The State Board or a Regional Board may “waive” waste discharge requirements  
18 for a specific discharge or type of discharge, but only if it determines that such waiver is consistent  
19 with applicable state and regional water quality control plans and is in the public interest. Any  
20 such waiver may not exceed five years in duration and must be conditioned on discharge  
21 monitoring that is designed to support the development and implementation of the waiver  
22 program. Such monitoring requirements must be adequate to verify the adequacy and  
23 effectiveness of the waiver’s conditions. All monitoring data resulting from implementation of  
24 such a conditional waiver must be made available to the public.

25          47.     In establishing or reviewing any water quality control plan or waste discharge  
26 requirements, or in connection with any action relating to any such plan or requirement, Regional  
27 Boards may investigate the quality of state waters within their region by requiring that any  
28 discharger or suspected discharger furnish technical or monitoring program reports and inspecting

1 facilities to ascertain compliance with the law. The State Board may carry out this same  
2 investigation authority if, after consultation with the Regional Board, it determines that doing so  
3 will not duplicate the efforts of the Regional Board.

4 48. Any person aggrieved by any action or failure to act by a Regional Board may  
5 petition the State Board for review, including review of any order prescribing waste discharge  
6 requirements or a conditional waiver. In response to such a petition, the actions that the State  
7 Board may take include finding that the Regional Board action or failure to act (1) was appropriate  
8 and proper or (2) was inappropriate or improper and direct the Regional Board to take appropriate  
9 action, take appropriate action itself, refer the matter to another state agency having jurisdiction, or  
10 take any combination of these actions. In taking such action, the State Board is vested with all of  
11 the powers of the Regional Boards.

12 49. The State Board may, on its own motion, at any time, review any Regional Board's  
13 action or failure to act. If the State Board takes action, it is vested with all of the powers provided  
14 to the Regional Boards under the Porter-Cologne Act.

15 50. The State Board has continuing supervisory control over navigable state waters and  
16 has an affirmative legal duty to take into account public trust uses and resources, including  
17 recreational and ecological uses and resources, in the planning, regulation, and allocation of water  
18 resources.

19 51. Article X, section 2 of the California Constitution requires that all state water  
20 resources be put to beneficial use to the fullest extent of which they are capable and prohibits the  
21 waste or unreasonable use or unreasonable method of use of state water. These constitutional  
22 limitations are codified in California Water Code section 100. Section 275 of the California Water  
23 Code directs that the State Board "shall take all appropriate proceedings or actions" to prevent  
24 waste, unreasonable use, or unreasonable method of use of state water.

25 52. California Water Code section 106.7 and California Health & Safety Code section  
26 116270(a) require the protection of the human right to water.

27 **Factual Background**

28 53. The State's river and streamside habitats support some of the most significant

1 biodiversity of any temperate region in the world. In the Central Coast region alone, these habitats  
2 support the California sea otter, endangered steelhead, endangered coho salmon, and other imperiled  
3 species. Historically, these habitats also have supported prolific commercial fisheries, clam beds,  
4 and shellfishing and sportfishing grounds important to the State’s economy and the public.

5 54. Water is equally fundamental to supporting the State’s human communities. In the  
6 Central Coast region alone, municipal and domestic wells supply 90 percent of the region’s drinking  
7 water needs, supporting millions of residents. These sources of drinking water are limited, however,  
8 and adequate quality water for many beneficial uses is in increasingly short supply.

9 55. The State Board and Regional Boards have identified discharges of nutrients,  
10 pesticides, sediment, pathogens, and other constituents from agricultural operations as a significant  
11 source of surface water and groundwater pollution. For some water bodies, the State Board and  
12 Regional Boards have identified agricultural discharges as the primary or a significant contributing  
13 source of pollution causing the water body to exceed water quality objectives established in regional  
14 water quality control plans.

15 56. In many areas, the agricultural industry depends on pumped local groundwater and  
16 drainage systems that carry contaminated runoff away from farms. In the Salinas Valley area of  
17 the Central Coast region, for example, thousands of miles of streams and rivers wind through  
18 farmland – converted from what was once a mosaic of salt ponds, grasslands, and wetlands –  
19 collecting agricultural wastewater that contains excess fertilizer and pesticides. The pollution  
20 percolates into underground aquifers or spills into California’s bays and oceans. This pollution is  
21 already rendering water unusable for drinking and other daily household uses as well as harming  
22 wildlife. Nearly every waterbody in the lower Salinas Valley, for example, is “impaired” for  
23 harmful pollutants associated with agriculture, such as nutrients, pesticides, and sediment, according  
24 to California and the U.S. Environmental Protection Agency.

25 57. Specifically, the Central Coast Regional Board has concluded that water pollution  
26 from irrigated agriculture “presents a significant threat to human health” and the environment on  
27 the Central Coast. Entire rural communities depend on groundwater as their only source of drinking  
28 water. Nitrates from excess fertilizer and pesticides pose the greatest risk to groundwater and

1 surface waterbodies. If agricultural pollution is not adequately addressed, “health impacts are likely  
2 to become more severe and widespread,” as the Regional Board concluded years ago.

3 58. Alarming, as pollution gets “substantially worse each year,” the groundwater for  
4 80 percent of people in the Salinas Valley (and other areas) will be undrinkable by 2050. Moreover,  
5 the pressures on water, a vital and dwindling resource in this mostly arid region, are expected to  
6 intensify as populations increase and a changing climate makes drought conditions more frequent or  
7 persistent.

8 59. Agricultural pollution has shifted the cost of removing nitrates from a multi-billion  
9 dollar agricultural industry to the public, including to municipalities and low-income communities.  
10 Water purveyors are prohibited from providing water exceeding nitrate standards to the public until  
11 the nitrate is removed by treatment or reduced through blending, resulting in significant cost to  
12 municipalities and local water agencies, estimated as high as billions of dollars.

13 60. The people most affected by this contamination are residents of rural communities  
14 who drink from shallow domestic wells such as those in the Salinas Valley. Many such households,  
15 however, may not even be aware that their tap water is contaminated. And those who are aware  
16 may not be able to afford water treatment, which would raise water bills for low-income households.  
17 In some cases, residents are forced to purchase bottled water in addition to paying for water service  
18 that cannot be used for drinking.

19 61. The State Board and the Central Coast Regional Board are well aware of these  
20 agricultural pollution problems and have been for many years. For more than a decade, regional  
21 monitoring in the agricultural areas of the Central Coast region and throughout the state has  
22 documented the degraded quality of surface waters and groundwater, as well as the continuing, and  
23 in some cases worsening, violations of drinking water and water quality standards. The Central  
24 Coast regional water quality control plan recognizes these continuing violations caused by  
25 agricultural discharges and proposes to address them through implementation of conditional waivers  
26 for irrigated agricultural lands.

27 62. Beyond the Central Coast and more generally across other agricultural areas of  
28 California, the State Board is aware, and has long been aware, of the water pollution problems and



1 water quality violations caused by agricultural activities. As part of its ILRP, the State Board has  
2 explained that:

3  
4 Discharges from agricultural lands include irrigation return flow, flows from tile  
5 drains, and storm water runoff. These discharges can affect water quality by  
6 transporting pollutants including pesticides, sediment, nutrients, salts (including  
7 selenium and boron), pathogens, and heavy metals from cultivated fields into  
8 surface waters. Many surface water bodies are impaired because of pollutants from  
9 agricultural sources. Groundwater bodies have also suffered pesticide, nitrate and  
10 salt contamination. Statewide, approximately 9,493 miles of rivers/streams and  
11 some 513,130 acres of lakes/reservoirs are listed on the 303(d) list as being  
12 impaired by irrigated agriculture. Of these, approximately 2800 miles, or  
13 approximately 28%, have been identified as impaired by pesticides.

14 63. Likewise, in the chapter on Agriculture in its “Nonpoint Source Encyclopedia,” the  
15 State Board states:

16  
17 The NPS pollutants typically associated with agriculture are nutrients, animal waste,  
18 sediments, and pesticides/herbicides/insecticides. Agricultural NPS pollution enters  
19 receiving waters by direct runoff to surface waters or seepage to ground water. Runoff of  
20 nutrients can result from excessive application of fertilizers and animal waste to land, and  
21 from improper storage of animal waste. Farming activities can cause excessive erosion,  
22 which results in sediment entering receiving waters. Improper use, aerial drift, and  
23 overapplication of pesticides cause harmful pollution. Improper grazing management can  
24 cause erosion, soil compaction, and excessive nutrients, all of which impair sensitive areas.  
25 Overapplication of irrigation water can cause runoff of sediments and pesticides to enter  
26 surface water or seep into ground water. Sediment, pesticides, and excess nutrients all  
27 affect aquatic habitats by causing eutrophication, sedimentation (turbidity), temperature  
28 increases, toxicity, and decreased oxygen.

64. These concerns are not new. For instance, in 1988, the State Board prepared a report  
entitled “Nitrate in Drinking Water Report to the Legislature” in response to a 1987 statutory  
directive from the Legislature. This report documented that nitrate contamination poses a  
quantitative threat to the supply of drinking water that equals or exceeds other water toxic  
contamination issues that have garnered public attention. For the Central Coast region in particular,  
the report noted local official estimates that groundwater in most of the Salinas Valley’s unconfined  
aquifers would exceed the drinking water standard for nitrate by the year 2000.

65. In California’s first Nonpoint Source Management Plan, issued in 1988, the State  
Board identified agricultural discharges as a significant source of nonpoint source pollution and  
identified measures, including best management practices, to improve water quality. The adoption  
and implementation of this plan, however, did not result in meaningful reductions in agricultural

1 pollution or meaningful improvements in water quality.

2           66.     In 1994, the State Board convened a technical advisory committee to provide a  
3 comprehensive review of California’s Nonpoint Source pollution program for ten categories of  
4 nonpoint source pollution. Five of these ten categories of nonpoint sources were agriculture-related  
5 discharges, including irrigated agriculture, nutrient applications, pesticide application, confined  
6 animal facilities, and grazing. The technical advisory committee issued separate reports presenting  
7 their recommendations for each of the five agricultural discharge categories.

8           67.     Ultimately, these recommendations were incorporated into a Nonpoint Source  
9 Program Strategy and Implementation Plan, prepared by the State Board and submitted to the U.S.  
10 Environmental Protection Agency (“EPA”) and the National Oceanic and Atmospheric  
11 Administration to comply with nonpoint source requirements under the Clean Water Act and the  
12 Coastal Zone Management Act, and issued in final form in 2000. This plan incorporated data from  
13 a California report on water quality prepared pursuant to section 305(b) of the Clean Water Act  
14 which showed that agricultural activity is by far the largest contributor to nonpoint source pollution  
15 for those surface water bodies and groundwater aquifers that are not meeting water quality  
16 standards. In the Nonpoint Source Program Strategy and Implementation Plan, the State Board  
17 acknowledged that agriculture contributes more than half of the pollution entering the nation’s water  
18 bodies and that studies have identified agriculture as the greatest source of water pollution in the  
19 United States. The Nonpoint Source Program Strategy and Implementation Plan adopted a fifteen-  
20 year strategy, from 1998 through 2013, to fully implement nonpoint source control through 61  
21 management measures addressing agricultural and urban nonpoint source pollution. The plan’s  
22 measures were to be administered in three sequential five-year implementation periods: (1) Self-  
23 Determined Implementation of Management Practices (formerly called “voluntary implement”); (2)  
24 Regulatory Based Encouragement of Management Practices; and (3) Effluent Limitations and  
25 Enforcement Actions. Thus, the State Board committed to move from education and voluntary  
26 action to regulatory encouragement during the ten-year period from 1998 until 2008 and thereafter  
27 to begin an implementation program of enforcing effluent limitations. In this plan, the State Board  
28 acknowledged that program accountability is critical to reassure the public of California’s

1 commitment to deal with nonpoint source pollution and explained that annual, biennial, and five-  
2 year reporting would track effectiveness and ensure that the plan stayed on track.

3           68.       With respect to agricultural activities, the Nonpoint Source Program Strategy and  
4 Implementation Plan specified agricultural management measures for (1) erosion and sediment  
5 control; (2) facility wastewater and runoff from confined animal facilities; (3) nutrient management;  
6 (4) pesticide management; (5) grazing management; (6) irrigation water management; and (7)  
7 education/outreach. For instance, with respect to nutrient management, the plan provided for a  
8 comprehensive management program that includes plant analysis to determine nutrient needs, crop  
9 nutrient budgets, identification of the types, amounts, and timing of nutrients necessary to produce a  
10 crop based on realistic crop yield expectations, identification of hazards to sites and adjacent  
11 environments, soil sampling and tests to determine crop nutrient needs, and proper calibration of  
12 nutrient equipment. The adoption and implementation of this plan in 2000, however, did not result  
13 in meaningful reductions in agricultural pollution or meaningful improvements in water quality.

14           69.       Increasingly frustrated with deteriorating water quality caused by agricultural  
15 discharges which were not being regulated by the State Board or Regional Boards or were being  
16 officially authorized under waivers of waste discharge requirements that contained no enforceable  
17 standards, the California Legislature intervened and adopted two statutory amendments that were  
18 designed to make such waivers more protective of water quality. In a 1999 amendment, the  
19 Legislature required that, before adopting a waiver under California Water Code section 13269, the  
20 State Board or Regional Boards must (1) hold a public hearing, (2) make a determination that the  
21 waiver is “not against the public interest,” (3) impose conditions in the waiver and require  
22 compliance with those conditions, and (4) limit any waiver to a duration of no more than five years.  
23 The amendments also required that waivers then in existence be terminated by 2003 in order to  
24 ensure that these new statutory requirements were implemented. In 2003, the Legislature again  
25 amended Water Code section 13269 to require that: (1) before adopting a waiver, the State Board or  
26 Regional Boards must determine that the waiver is “consistent with” any state or regional water  
27 quality control plan and “in the public interest” and (2) every waiver must include, as a condition,  
28 monitoring requirements for verifying the adequacy and effectiveness of the waiver’s conditions; in

1 addition, the 2003 legislative amendments authorized the State Board and Regional Boards to  
2 impose an annual fee as a condition of the waiver.

3         70.       Some Regional Boards, including the Central Coast Regional Board, adopted or re-  
4 adopted conditional waivers for agricultural discharges in or around 2004 in an attempt to conform  
5 to these legislative amendments. Such waivers purported to authorize agricultural discharges but  
6 did not include enforceable discharge standards or other requirements designed to actually reduce  
7 pollution discharges. Other Regional Boards did not even adopt conditional waivers, waste  
8 discharge requirements, or any other orders to control agricultural discharges. Likewise, the State  
9 Board failed, as the agency with the ultimate responsibility, to take any action to ensure compliance  
10 with state water quality policies and regional water quality control plans. As a result, despite the  
11 years of studying agricultural pollution problems and years of planning for possible solutions by the  
12 State Board, and despite action by the Legislature to tighten State and Regional Board regulation of  
13 these sources, water quality conditions failed to improve or continued to worsen in agricultural  
14 areas, putting human health and the environment at risk.

15         71.       Frustrated by these circumstances, the Legislature took action again in 2008 to  
16 improve our understanding of the causes of nitrate contamination in groundwater and to identify  
17 potential remediation solutions and funding sources to clean up groundwater and ensure the  
18 provision of safe drinking water to all communities. The 2008 legislation requires that the State  
19 Board, in consultation with other agencies, develop pilot projects for nitrate contamination in the  
20 Tulare Lake Basin and the Salinas Valley. The Legislation directed the State Board to collaborate  
21 with the California Department of Public Health and other state agencies to develop methods and  
22 funding for these pilot projects, to submit a report to the Legislature, and to implement developed  
23 recommendations in the Central Coastal and Central Valley regions. In enacting this new  
24 legislation, the Legislature declared that: (1) water is vital to the economy, environment, and overall  
25 well-being of the State; (2) California faces increasing challenges in managing its water supply due  
26 to climate change, uncertainty regarding the availability of water from the Sacramento-San Joaquin  
27 Delta and other sources, an increasing state population, limits on public funds, and other factors; and  
28 (3) California must adopt a new, updated, and comprehensive set of water planning, design, and

1 implementation policies that reflect these realities to protect its water supply into the future. The  
2 policy and purpose of the new legislation was to increase water supply availability and reliability  
3 through conservation, improve water quality, increase wildlife and ecosystem protections, protect  
4 public health and safety, and address the effects of climate change.

5 72. In response to this directive, the State Board contracted with the Center for  
6 Watershed Sciences at the University of California, Davis to prepare an analysis of nitrates in  
7 groundwater in the Tulare Lake Basin and Salinas Valley. In 2010, the State Board also convened  
8 an Interagency Task Force, which included representatives from the California Department of Public  
9 Health, the California Department of Food and Agriculture, the Department of Pesticide Regulation,  
10 California Environmental Protection Agency, and local environmental health agencies, to provide  
11 input into the U.C. Davis report.

12 73. The resulting report, published in 2012, evaluated groundwater conditions in the  
13 Salinas Valley and Tulare Lake Basin and concluded that nitrate contamination in drinking water is  
14 both widespread and increasing. The report concluded that agricultural fertilizers and animal wastes  
15 as applied to cropland are by far the largest regional sources of nitrate in groundwater. The report  
16 identified a number of actions that could reduce nitrate pollution, including such measures as  
17 nitrogen mass balance accounting, fertilizer or water use fees, and improved monitoring to assess  
18 the efficacy of present efforts. To the best of Petitioners' knowledge, the State Board has not  
19 substantially or meaningfully implemented any of these recommendations.

20 74. In 2012, the Governor convened a separate Drinking Water Stakeholder Group to  
21 develop recommendations for addressing nitrate contamination in the Tulare Lake Basin and Salinas  
22 Valley, particularly in unincorporated areas that do not have safe drinking water.

23 75. To implement the State Board's recommendation in the U.C. Davis report for  
24 tracking the application of nitrogen fertilizing material, the California Department of Food and  
25 Agriculture, in coordination with the State Board, convened another Task Force to identify  
26 appropriate nitrogen tracking and reporting systems that would provide meaningful and high quality  
27 data. In 2013, this Task Force recommended the use of a nitrogen mass balance concept as part of  
28 an effective nitrogen tracking and reporting system to be broadly applied geographically. As with

1 prior reports, the State Board and Regional Boards have failed to implement these  
2 recommendations.

3           76.     In 2014, the State Board convened yet another “Expert Panel” composed of  
4 agricultural consultants and academics to study nitrogen contamination. Again, that panel  
5 recommended nutrient balancing (using a slightly different ratio) but added, “...multi-year averages  
6 of the A/R [applied divided by removed and stored] ratio will provide valid information for  
7 assessment.” Multi-year averages obfuscate the responsible party, crop, and assessment of  
8 management practices for vegetable crops that are rotated yearly and grown by specialty growers.

9           77.     Despite years of establishing policies, designing plans, and studying and collecting  
10 significant supporting evidence to address agricultural pollution, neither the State Board nor the  
11 Regional Boards have exercised their statutory authority to meaningfully regulate agricultural  
12 discharges, through individual waste discharge requirements, conditional waivers or general waste  
13 discharge requirements.

14           78.     Eight of the nine Regional Boards have prescribed conditional waivers or general  
15 waste discharge requirements for one or more category of agricultural discharges or some portions  
16 of their regions where agricultural activity occurs. For example, Region 1 (North Coast) has  
17 adopted or is developing conditional waivers for particular watersheds or particular crops, Region  
18 2 (San Francisco) has adopted conditional waivers for grazing in some watersheds, Region 3  
19 (Central Coast) has adopted a conditional waiver for discharges from irrigated lands, Region 4  
20 (Los Angeles) has adopted a conditional waiver for irrigated agricultural lands, Region 5 (Central  
21 Valley) has adopted or is revising general waste discharge requirements for growers in various  
22 watersheds or areas, Region 7 (Colorado River Basin) has adopted conditional waivers for  
23 agricultural wastewater in various watersheds or areas, Region 8 (Santa Ana) has adopted a  
24 conditional waiver for discharges from agricultural operations, and Region 9 (San Diego) has  
25 adopted general waste discharge requirements for discharges from commercial agricultural  
26 operations (collectively “General Agricultural Orders”). For many regions, these General  
27 Agricultural Orders only cover a portion of the existing agricultural dischargers, meaning that  
28 many agricultural discharge activities are not subject to any regulatory order of any kind.

1           79.     These General Agricultural Orders allow and authorize discharges by enrolled  
2 dischargers and/or covered agricultural operations and, in each instance, purport to require  
3 compliance with water quality control plans, state water quality policies incorporated into those  
4 plans, and applicable water quality objectives. None of these General Agricultural Orders,  
5 however, include enforceable discharge standards or limitations or adequate monitoring to  
6 determine whether water quality objectives are being achieved and maintained and the timeline for  
7 attaining the objectives.

8           80.     With respect to some of these General Agricultural Orders, the State Board has  
9 reviewed and revised the Regional Board order in response to a petition for review or on its own  
10 motion, making the orders less environmentally protective and less effective. With respect to  
11 other General Agricultural Orders, the State Board has either (1) declined to review the Regional  
12 Board order in response to a petition for review or (2) failed to act on its own motion to review the  
13 Regional Board’s order.

14           81.     In the Central Coast region, the Regional Board’s failed efforts to address irrigated  
15 agricultural discharges date back to 1983, when it issued conditional waivers intended primarily to  
16 address storm water runoff. The next effort came in 2004, which the Regional Board acknowledged  
17 was ineffective because it did not include conditions “consistent with typical orders to control waste  
18 discharges from industries or activities affecting water quality in a similar level of severity.” The  
19 Regional Board’s 2012 effort, as modified by the State Board in 2013 (“2013 Waiver), was also  
20 ineffective for similar reasons.

21           82.     As this Court determined in *Coastkeeper I*, the 2013 Waiver lacked sufficiently  
22 specific, enforceable measures and feedback mechanisms needed to meet the Central Coast water  
23 quality control plan’s water quality objectives and thus did not comply with California Water Code  
24 section 13269 or the Nonpoint Source Policy. This Court also found that the 2013 Waiver suffered  
25 from the same defects as the predecessor 2004 Waiver which also contained inadequate standards  
26 and feedback mechanisms to assess the effectiveness of implemented management practices.

27           83.     Notwithstanding this Court’s ruling in *Coastkeeper I*, the long history of ineffective  
28 regulation, and repeated representations that the regulation of agricultural discharges is necessarily

1 an “iterative” process whereby future conditional waivers would be more environmentally  
2 protective, the Central Coast Regional Board adopted the 2017 Waiver, which is essentially  
3 unchanged in any substantive way from the unlawful 2013 Waiver. In other words, the 2017  
4 Waiver will not remedy any of the defects, dating back to at least 2004, identified in the prior  
5 judicial ruling.

6 84. On April 7, 2017, having participated in the administrative process that resulted in  
7 the 2017 Waiver, and after its adoption by the Central Coast Regional Board in March 2017,  
8 Petitioners timely filed an administrative petition pursuant to Water Code section 13320 with the  
9 State Board to review the waiver. The State Board declined to accept and review this petition within  
10 90 days. Accordingly, pursuant to Title 23, section 2050.5(e) of the California Code of Regulations,  
11 the petition was deemed denied by operation of law on July 7, 2017. Petitioners thus exhausted  
12 their administrative remedies as to the 2017 Waiver.

### 13 **CAUSES OF ACTION**

#### 14 **First Cause of Action** 15 **(Central Coast Regional Board - Violations of California Water Code Section 13269,** 16 **Public Trust Doctrine, Reasonable Use, and Human Right to Water)**

17 85. Petitioners reallege and incorporate by reference each and every allegation  
18 contained in paragraphs 1 through 84 above as though fully set forth herein.

18 86. In adopting the 2017 Waiver, the Central Coast Regional Board violated:

19 a. Water Code section 13269(a)(1) by failing to adopt requirements consistent  
20 with the Central Coast water quality control plan, including the NPS Policy and the  
21 Antidegradation Policy, and by failing to adopt requirements that are in the public  
22 interest such that the 2017 Waiver does not ensure that water quality objectives  
23 would be achieved and maintained and does not specify a timeline for achieving the  
24 objectives;

25 b. Water Code section 13269(a)(2) by failing to include monitoring  
26 requirements that verify the adequacy and effectiveness of the waiver’s conditions,  
27 including by eliminating photomonitoring, and failing to provide for the monitoring  
28 results to be made available to the public;



1 c. California's Public Trust Doctrine by failing to consider the impacts of the  
2 2017 Waiver on public trust resources and failing to protect and avoid or minimize  
3 harm to public trust resources to the extent feasible;

4 d. Article 10, section 2 of the California Constitution and Water Code sections  
5 100 and 275 by failing to protect against waste and unreasonable use or  
6 unreasonable method of use of state waters; and

7 e. California Water Code section 106.7 and California Health & Safety Code  
8 section 116270(a) by failing to ensure that the 2017 Waiver protects and  
9 implements the human right to water.

10 87. The Central Coast Regional Board's unlawful adoption of the 2017 Waiver  
11 constitutes a prejudicial abuse of discretion, does not comply with the laws as alleged, is  
12 unsupported by substantial evidence, and is actionable under California Water Code section 13330  
13 and California Code of Civil Procedure section 1094.5. Petitioners have no other adequate  
14 remedy at law.

15 **Second Cause of Action**  
16 **(State Board - Declaratory and Injunctive Relief)**

17 88. Petitioners reallege and incorporate by reference each and every allegation contained  
18 in paragraphs 1 through 87 above as though fully set forth herein.

19 89. As set forth in paragraphs 25 through 52, the State Board has plenary oversight  
20 authority and a legal duty under the California Constitution, the common law, and the Water Code  
21 to protect state water quality from pollution and degradation such that water quality objectives are  
22 attained and maintained and is the regulator with the ultimate duty for achieving and maintaining  
23 such objectives when Regional Boards and other local and state agencies fail to do so.

24 90. In adopting General Agricultural Orders or taking no regulatory action with respect  
25 to some agricultural discharges, Regional Boards have systematically failed to ensure that the  
26 authorized discharges of agricultural pollutants do not cause or contribute to exceedances of water  
27 quality objectives, impairment of beneficial uses, or a condition of nuisance. Accordingly, the State  
28 Board has the legal authority, responsibility, and ultimate duty to take all necessary and appropriate  
action to remedy these Regional Board failures.

1           91.     As part of its authority and responsibilities under state and federal law, the State  
2 Board has a duty to ensure that Regional Boards comply with state water quality policies, regional  
3 water quality control plans, and other state constitutional, statutory, and common law obligations.

4           92.     In review, revising, and/or declining to review and revise General Agricultural  
5 Orders adopted by Regional Boards, either in response to petitions for review by aggrieved persons  
6 or on its own motion, the State Board has failed to ensure that the authorized agricultural discharges  
7 do not cause or contribute to exceedance of water quality objectives, impairment of beneficial uses,  
8 or a condition of nuisance.

9           93.     In failing to take any action, including in failing to take action on its own motion  
10 where Regional Boards have not adopted General Agricultural Orders or individual waste discharge  
11 requirements to cover agricultural discharges, the State Board has failed to ensure that the  
12 authorized agricultural discharges do not cause or contribute to exceedance of water quality  
13 objectives, impairment of beneficial uses, or a condition of nuisance.

14           94.     For these reasons, the State Board has failed to comply with its legal duties. In  
15 particular, through its actions and inactions with respect to General Agricultural Orders adopted by  
16 Regional Boards and with respect to agricultural discharges not covered by any General Agricultural  
17 Orders or individual waste discharge requirements, the State Board has engaged, and continues to  
18 engage, in a pattern and practice of systematically failing to comply with its legal obligations under  
19 state law, including by:

- 20           a.     Failing to ensure that General Agricultural Orders comply with the requirements of  
21                 the NPS Policy or failing to issue its own orders for agricultural discharges that  
22                 comply with the requirements of the NPS Policy;
- 23           b.     Failing to ensure that General Agricultural Orders comply with the requirements of  
24                 the Antidegradation Policy or failing to issue its own orders for agricultural  
25                 discharges that comply with the requirements of the Antidegradation Policy;
- 26           c.     Failing to ensure that General Agricultural Orders implement water quality  
27                 objectives, protect beneficial uses, and otherwise comply with applicable water  
28                 quality control plans or failing to issue its own orders for agricultural discharges that

- 1           implement these requirements;
- 2           d.   Failing to ensure that monitoring and reporting requirements prescribed in General
- 3           Agricultural Orders are designed and adequate to verify the effectiveness of such
- 4           orders and are made available to the public or failing to issue its own orders for
- 5           agricultural discharges to satisfy these requirements;
- 6           e.   Failing to consider the impacts of General Agricultural Orders on public trust
- 7           resources, or protecting trust resources when feasible, as required by the Public Trust
- 8           Doctrine or failing to issue its own orders for agricultural discharges to satisfy these
- 9           Public Trust Doctrine requirements;
- 10          f.   Failing to ensure that General Agricultural Orders do not result in waste or
- 11          unreasonable use or unreasonable method of use of waters of the state, in violation of
- 12          Article X, section 2 of the California Constitution and Water Code sections 100 and
- 13          275 or failing to issue its own orders for agricultural discharges that comply with
- 14          these requirements;
- 15          g.   Failing to ensure that General Agricultural Orders protect and implement the human
- 16          right to water guaranteed by California Water Code section 106.7 and California
- 17          Health & Safety Code section 116270(a) or failing to issue its own orders for
- 18          agricultural discharges to comply with the requirements; and
- 19          h.   Failing to investigate or undertake any action with respect to ongoing violations of
- 20          Porter-Cologne Act requirements by agricultural dischargers who are causing or
- 21          contributing to exceedances of water quality objectives or a pollution nuisance.

22          95.   These systemic and continuous failures demonstrate a pattern and practice of the  
23 State Board neglecting its duty to comply with the Porter-Cologne Act’s mandate that water quality  
24 objectives be attained and maintained.

25          96.   There is a present and actual existing controversy between Petitioners and the State  
26 Board as to the legality of this pattern and practice, which is continuing in nature. The State Board  
27 has not proceeded in a manner required by law and has prejudicially abused its discretion by  
28 repeatedly, and as a pattern or practice, failing to comply with its obligations under the Porter-

1 Cologne Act and under the other aforementioned statutory, constitutional, and common law.

2 97. Such conduct by the State Board irreparably harms and will continue to irreparably  
3 harm Petitioners, their members, and the general public by facilitating the continued degradation of  
4 the quality of state waters and associated public trust resources to the detriment of both human  
5 communities and ecosystems that depend on them.

6 98. Petitioners seek a judicial determination of the rights and obligations of the  
7 respective parties and a declaration concerning the allegations of this complaint, pursuant to  
8 California Code of Civil Procedure section 1060. Such a declaration is necessary and appropriate at  
9 this time in order for Petitioners to ascertain the right to require the State Board to act in accordance  
10 with its legal obligations to protect public health and the environment.

11 99. Petitioners also are entitled to a writ of mandate under California Code of Civil  
12 Procedure section 1085 directing the State Board to comply with its obligations under law with  
13 respect to issuing or reviewing General Agricultural Orders or taking appropriate action where  
14 Regional Boards have failed to issue General Agricultural Orders or individual waste discharge  
15 requirements for agricultural discharges. Petitioners have no other adequate remedy at law.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioners pray for entry of judgment as follows:

18 1. For a preemptory writ of mandate directed to the Central Coast Regional Board (1)  
19 declaring that the Central Coast Regional Board's Order R3-20170002 and the Monitoring and  
20 Reporting Program, Order Nos. R3-2017-0002-01 through R3-2017-0002-03, are unlawful, (2)  
21 vacating and setting aside Order No. R3-2017-0002 and enjoining its implementation, and (3)  
22 remanding Order No. R3-2017-0002 to the Central Coast Regional Board for further proceedings  
23 consistent with applicable law and directing the Central Coast Regional Board to prepare and submit  
24 a remedial plan that specifies, among other things, a timeline of compliance to achieve the water  
25 quality objectives in the Central Coast water quality control plan, reasonable progress targets that  
26 are enforceable, and strategies for achieving the targets;

27 2. For a declaratory judgment and preemptory writ of mandate (1) declaring that the  
28 State Board is engaged in an ongoing pattern and practice of unlawful conduct in connection with its

1 legal duties to oversee waste discharge requirements and conditional waivers for agricultural and  
2 irrigated lands discharges, and (2) directing the State Board to comply with its legal obligations by  
3 preparing and submitting a remedial plan that specifies, among other things, a timeline of  
4 compliance to achieve the water quality objectives affected by irrigated agriculture in the State's  
5 various water quality control plans, reasonable progress targets that are enforceable, and strategies  
6 for achieving the targets.

7 3. For an award of attorneys' fees under California Civil Procedure Code section 1021.5  
8 and costs of suit.

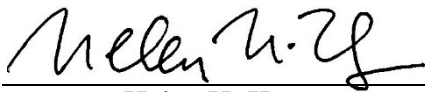
9 4. For any such other equitable or legal relief as the Court deems appropriate.  
10

11 Date: August 3, 2017

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

12  
13 By:   
14 Deborah A. Sivas

15 ENVIRONMENTAL LAW AND JUSTICE CLINIC  
16 Golden Gate University School of Law


17 By:   
18 Helen H. Kang  
19 Attorneys for Petitioners  
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**VERIFICATION**

I am the attorney and lead counsel for all Petitioners in this matter. I am a resident of and have my professional law office in Santa Clara County, California. None of the Petitioners reside or have offices in Santa Clara County and for that reason I provide this verification on their behalf. I have read and am familiar with the contents of this Petition, and I am informed and believe that the matters stated herein are true and correct to the best of my knowledge.

I declare under the penalty of perjury that the foregoing is true and correct and that I executed this declaration on this 3rd day of August, 2017 at Stanford, California.

By:   
Deborah A. Sivas

# **EXHIBIT A**

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Attorneys for Petitioners-Plaintiffs

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

MONTEREY COASTKEEPER, a program of THE  
OTTER PROJECT, a non-profit organization;  
CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE; a non-profit organization;  
ENVIRONMENTAL JUSTICE COALITION FOR  
WATER, a non-profit organization; PACIFIC  
COAST FEDERATION OF FISHERMEN'S  
ASSOCIATION, a non-profit trade association;  
INSTITUTE FOR FISHERIES RESOURCES, a  
non-profit organization; CALIFORNIA  
COASTKEEPER ALLIANCE, a non-profit  
organization; SANTA BARBARA  
CHANNELKEEPER, a non-profit organization;  
ORANGE COUNTY COASTKEEPER, a non-profit  
organization; and INLAND EMPIRE  
WATERKEEPER, a non-profit organization,

Petitioners-Plaintiffs,

v.

CENTRAL COAST REGIONAL WATER  
QUALITY CONTROL BOARD, a public agency;  
and CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, a public agency,

Respondents-Defendants.

Case No.

**NOTICE TO ATTORNEY GENERAL**



To: THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

PLEASE TAKE NOTICE, pursuant to Code of Civil Procedure § 388, that on August 3, 2017, Petitioners-Plaintiffs Monterey Coastkeeper, California Sportfishing Protection Alliance, Environmental Justice Coalition for Water, Pacific Coast Federation of Fishermen's Association, Institute for Fisheries Resources, California Coastkeeper Alliance, Santa Barbara Channelkeeper, Orange County Coastkeeper, and Inland Empire Waterkeeper will file a petition/complaint against the State Water Resources Control Board ("State Board") and the Central Coast Regional Water Quality Control Board ("Central Coast Regional Board").

The Petition alleges, among other things, that the State Board maintains a pattern and practice of authorizing conditional waivers and/or waste discharge requirements for agricultural pollution in violation of state water quality policies and regional water quality control plans, and that the Central Coast Regional Board violated state water quality policies and regional water quality control plans in adopting Agricultural Order No. R3-2017-0002.

A true and correct copy of the petition and complaint is attached to this notice.

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

By:   
Deborah A. Sivas

Attorneys for Petitioners/Plaintiffs

## PROOF OF SERVICE

ANA VILLANUEVA declares:

I am over the age of eighteen years and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California 94305-8610.

On August 3, 2017, I served the foregoing **NOTICE TO ATTORNEY GENERAL** on all parties to this action by placing true and correct copies thereof

- in a sealed envelope, with postage fully prepaid, in the United States Mail at Stanford, California, addressed as follows:
- for facsimile transmission to each recipient identified below to the facsimile number appearing after such recipient's name and mailing address.
- for Federal Express next-day delivery service, addressed as follows:

Xavier Becerra  
Attorney General of California  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550

I declare under penalty of perjury (under the laws of the State of California) that the foregoing is true and correct, and that this declaration was executed August 3, 2017 at Stanford, California.



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ANA VILLANUEVA

# **EXHIBIT B**



**SUPERIOR COURT OF CALIFORNIA**  
**County of Sacramento**  
720 Ninth Street ~ Room 102  
Sacramento, CA 95814-1380  
(916) 874-5522 — Website [www.saccourt.com](http://www.saccourt.com)

**GUIDE TO THE PROCEDURES FOR PROSECUTING PETITIONS  
FOR PREROGATIVE WRITS  
(as specified in Local Rule 2.26(E))**

This guide to the procedures for prosecuting petitions for writs of mandate and other prerogative writs in the Sacramento Superior Court is made available for your general information pursuant to Local Rule 2.26(E). A protocol for each department to which writs are assigned (hereinafter "assigned writ department") supplements these procedures with respect to the filing of documents, the scheduling of hearings, and the use of tentative rulings. The protocol is available from the assigned writ department and on the "Civil" page of the court's website under [Prerogative Writ Departments and Protocol](#).

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### Filing a Writ Petition:

Step	Action
1.	File an original and two copies of the petition and a civil case cover sheet at the civil front counter in Room 102 on the first floor of the main courthouse. <i>Or</i> mail an original and two copies of the petition and a civil case cover sheet to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
2.	Pay the filing fee pursuant to Government Code section 70611 in Room 102.
3.	Receive from the civil front counter clerk a Notice of Case Assignment and a copy of this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

### Serving a Writ Petition:

Step	Action
1.	Serve the writ petition on respondent(s) and real party(ies) in compliance with the requirements of Code of Civil Procedure (CCP) sections 1107 and 1088.5. Until compliance with these statutory service requirements is established by the filing of an appropriate proof of service, the court cannot hear or act on the petition.
2.	Along with the writ petition, serve copies of the Notice of Case Assignment and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

For service of an application for an alternative writ, see below, "Setting a Hearing on the Merits of a Writ Petition, (2) Securing issuance of an alternative writ."

### Filing Subsequent Documents:

Step	Action
1.	File an original and two copies of all subsequent documents related to the writ petition either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814. <i>Exception:</i> Documents filed one day before or on the day of the hearing shall be filed with the courtroom clerk in the assigned writ department after any applicable fees have been paid in Room 102.
2.	Documents faxed directly to the court <b>will not be filed</b> .
3.	Specify on the first page of each document the date, time and department of any scheduled hearing to which the document applies. To set a hearing, see below, "Bringing Motions before the Hearing on the Merits of a Writ Petition" and "Setting a Hearing on the Merits of a Writ Petition."



**Noticing Related  
Writ Cases and  
Possible Consolidation:**

<b>Step</b>	<b>Action</b>
1.	When filing a Notice of Related Case pursuant to rule 3.300(d) of the California Rules of Court regarding two or more writ cases assigned to different judges in this court, file the Notice <b>in each writ case</b> .
2.	When filing a Response to a Notice of Related Case pursuant to rule 3.300(g) of the California Rules of Court, file the Response <b>in each writ case</b> .
3.	Serve the Notice or Response on <b>each party to each case</b> .

Note that the court proceeds with respect to related writ cases under rule 3.300(h)(1) of the California Rules of Court (CRC) as follows:

- The judges assigned to civil writ cases listed in a Notice Of Related Case filed and served pursuant to CRC 3.300(d) identify which one of them is assigned to the earliest filed case, information which should be included in the Notice of Related Case pursuant to CRC 3.300(c)(2). That judge proceeds under CRC 3.300(h)(1)(A) to determine whether the cases are related within the meaning of CRC 3.300(a).
- If the judge assigned to the earliest filed case determines that the cases are related, the judge orders the cases related and assigned to his or her department. That order is filed in each of the related cases and served on the parties to each of the related cases pursuant to CRC 3.300(i). In addition, an Amended Notice of Case Assignment, reassigning to the judge each of the related cases not previously assigned to him or her, is filed and served upon all parties to each reassigned case. Courtesy copies of the order and Amended Notice(s) of Case Assignment are sent to the judges previously assigned to any of the related cases.
- If the judge assigned to the earliest filed case determines that the cases are not related within the meaning of CRC 3.300(a), the judge issues a minute order stating and briefly explaining the determination. This minute order is filed in each of the cases listed in the Notice of Related Case and is served on all parties to the listed cases pursuant to CRC 3.300(i).
- In response to an order determining that the cases are not related, any party to any of the cases listed in the Notice of Related Case may file a motion pursuant to CRC 3.300(h)(1)(D) to have the cases related. The motion must be filed with the Presiding judge or a judge designated by the Presiding Judge.



**Applying for a  
Temporary Stay in  
Administrative Mandate  
Proceedings (CCP § 1094.5 (g) or (h)):**

Step	Action
1.	<p>Prepare an ex parte application for an order temporarily staying operation of the administrative decision under review in the proceeding. Identify whether the temporary stay order is requested pursuant to subdivision (g) or (h) of the CCP § 1094.5. Specify “Ex Parte” in the title of the application.</p> <p>Pursuant to rules 3.1201 and 3.1202 of the California Rules of Court and this Guide to the Procedures for Prosecuting Petitions for Prerogative Writs, an ex parte application for a stay order includes the following supporting documents and papers:</p> <ul style="list-style-type: none"><li>• Endorsed copy of the petition.</li><li>• Points and authorities, declarations and other supporting documents, including relevant portions of the administrative record if available.</li><li>• Proposed order to show cause why the administrative decision under review in the proceeding should not be temporarily stayed pending a hearing on the merits of the writ petition (OSC). This proposed OSC should contain:<ul style="list-style-type: none"><li>- blank spaces for the date and time of the hearing on the OSC,</li><li>- an order for service of the OSC and any supporting papers not previously served with a blank space for a date of service prior to the hearing on the OSC, and</li><li>- an order staying the administrative decision pending the hearing on the OSC.</li></ul></li><li>• Proposed stay order.</li><li>• Notice of hearing on the petition with blank spaces for date and time (unless the stay is being requested in conjunction with an application for an alternative writ).</li><li>• Declaration regarding notice, as specified in rule 3.1204.</li></ul> <p>In addition, CCP § 1094.5 (g) and (h) require that proof of service of a copy of the application on the respondent accompany an application for a stay. See subdivisions (g) and (h) for required manner of service.</p>
2.	<p>Contact the assigned writ department to reserve an ex parte hearing date and time and to determine whether the assigned writ department requires any of the documents or papers listed above in Step 1 to be filed before the hearing. Note that some writ departments hear writ matters only on Fridays.</p>
3.	<p>Notify respondent(s) and real party(ies) of the hearing on the ex parte stay application in accordance with rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice prepared pursuant to rule 3.1204.</p> <p><b>Note:</b> The Court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the ex parte hearing, file and serve the documents and papers as soon as possible and no later than the time of the hearing. (See rule 3.1206 of the California Rules of Court.)</p>



At the ex parte hearing, depending on the nature of the factual and legal issues raised by the stay application and the practical exigencies of the matter, the court will either rule on the stay application immediately or issue the proposed OSC with or without a temporary stay order pending the hearing on the OSC at a specified date and time.

If the court grants a stay at the ex parte hearing or the hearing on the OSC, the court will sign and file the proposed stay order and set a date and time for a hearing on the merits of the petition. The court clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

If the Court denies a stay at the ex parte hearing or the hearing on the OSC, the court, upon petitioner's request, will set a date and time for a hearing on the merits of the petition. The clerk will record the hearing date and time in the notice of hearing on the petition, or if the court has ordered the issuance of an alternative writ, in the alternative writ.

**Applying for a  
Temporary Stay  
in Traditional Mandate  
Proceedings (CCP § 1085):**

Step	Action
1.	Follow the statutory and regulatory provisions for obtaining a temporary restraining order (TRO), an order to show cause why a preliminary injunction should not be issued (OSC), and/or a preliminary injunction, set forth in the Code of Civil Procedure (including but not limited to CCP §§ 525, 526, 527, 528 and 529) and rule 3.1150 of the California Rules of Court. These provisions constitute rules of practice for temporary stays in mandate proceedings brought under CCP § 1085 in the absence of temporary stay provisions specific to such mandate proceedings. (See CCP § 1109.)
2.	When following the statutory and regulatory procedures for obtaining a TRO and/or an OSC, comply with the ex parte procedures outlined above in "Applying for a Temporary Stay in Administrative Mandate Proceedings" and in rule 3.1201 et seq. of the California Rules of Court.
3.	If no TRO or OSC is sought, notice a motion for a preliminary injunction following the procedures set forth below in "Bringing Motions Before the Hearing on the Merits"

Note that a temporary stay in proceedings on a petition for a writ of prohibition may be obtained by following the procedures set forth below under "Setting a Hearing on the Merits of a Petition, (2) Securing issuance of alternative writ." An alternative writ of prohibition, unlike an alternative writ of mandate, stays specified action by the respondent until further order of the court. (See CCP §§ 1087, 1104.)





### **Bringing Motions before The Hearing on the Merits of a Writ Petition:**

Motions on the pleadings and other pretrial matters brought in civil actions -- including motions for change of venue, demurrers, motions to strike, motions to dismiss, discovery motions, and motions for summary judgment -- may generally be brought in writ proceedings. (See CCP § 1109.)

Motions addressing the merits of the petition in whole or in part should be calendared for a hearing at the same time as the hearing on the merits. Motions directed at resolving issues preliminary to and distinct from the issues related to the merits of the petition, such as untimeliness of the petition under an applicable statute of limitations, should be calendared before the hearing on the merits of a writ petition. The court, in the exercise of its discretion to control the order of litigation before it, may advance the hearing on a motion to a date before the hearing on the merits or may postpone a motion to the hearing on the merits when such advancement or postponement will promote the efficient conduct and disposition of the proceeding.

Because a writ petition is usually disposed of by a hearing on the merits which is limited to oral argument on written briefs and documentary evidence, the usefulness of a motion for summary judgment or summary adjudication in economically disposing of an unmeritorious case or claim is substantially reduced in writ proceedings. Thus, before bringing a motion for summary judgment or summary adjudication, counsel should carefully evaluate whether the purpose of the motion can be achieved more directly and completely through a hearing on the merits of the petition.

<b>Step</b>	<b>Action</b>
1.	Contact the assigned writ department to reserve a date and time available on the department's calendar for a hearing on the motion. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Some assigned writ departments hear writ matters only on Fridays.
2.	Notice the motion in accordance with the civil law and motion procedures in CCP § 1005 and in compliance with the California Rules of Court, including rules 3.1110 through 3.1113, 3.1115-3.1116, 3.1300, and 3.1320 through 3.1324. Comply with the page limits for memoranda set forth in rule 3.1113.  If the assigned writ department uses the tentative ruling system, the notice of motion must contain tentative ruling language available from the department.



## Setting a Hearing on the Merits of a Writ Petition:

If a hearing on the merits of a writ petition has not been set in conjunction with an ex parte hearing on an application for a temporary stay, it may be set either by (1) noticing a hearing on the petition or (2) securing issuance of an alternative writ. **Note:** The court prefers, as more efficient and economical for both itself and the parties, the procedure of noticing a hearing on the petition.

The date set for a hearing on the merits of a writ petition, whether by notice or alternative writ, should allow the parties to file briefs in accordance with the following schedule established in Local Rule 2.26(D):

Opening brief:	Due 45 days before the hearing
Opposition brief:	Due 25 days before the hearing
Reply brief:	Due 15 days before the hearing

Note that Local Rule 2.26(D) limits the length of each of these briefs to 50 pages instead of the page limits in rule 3.1113 of the California Rules of Court.

The date of the hearing on the merits may be expedited and the briefing schedule shortened upon an application setting forth circumstances warranting an expedited hearing. The application for an expedited hearing may be made orally at a hearing for a temporary stay or alternative writ or on an ex parte basis in accordance with rules 3.1201 through 3.1206 of the California Rules of Court.

### (1) Noticing a hearing on a writ petition

Step	Action
1.	Contact the assigned writ department to reserve an available date and time for a hearing on the writ petition. Prior to reserving a date, contact the other parties to the writ petition and determine their availability on the date. Writ petitions are normally heard on Fridays.
2.	Prepare and file a notice of hearing on the writ petition specifying the reserved hearing date and time. If the assigned writ department uses the tentative ruling system, the notice of hearing must contain tentative ruling language available from the department.
3.	File the notice of hearing either at the civil front counter in Room 102 or by mail addressed to the Civil Division - Room 102, 720 9th Street, Sacramento, CA 95814.
4.	Serve a copy of the notice of hearing on respondent(s) and real party(ies) no later than the time allowed for filing and serving the opening brief. If not previously served, the writ petition, the Notice of Assignment, and this Guide should also be served no later than the time for filing and serving the opening brief.



## (2) Securing issuance of an alternative writ

The alternative writ is an order to show cause that calendars a writ petition for a hearing on the merits. With the exception of an alternative writ of prohibition issued pursuant to CCP § 1104, the alternative writ does not, in and of itself, accomplish a stay or afford any affirmative relief.

Note that, with the alternative writ method, two writs may be issued in the proceeding. First, the alternative writ is issued to set a hearing on the merits of the petition. Second, a peremptory writ may issue after the hearing on the merits.

Step	Action
1.	<p>Prepare an ex parte application for an alternative writ. Specify "Ex Parte" in the title of the application.</p> <p>As provided in rules 3.1201 and 3.1202 of the California Rules of Court and this Guide, an ex parte application for an alternative writ includes the following supporting documents and papers:</p> <ul style="list-style-type: none"><li>• Endorsed copy of the petition.</li><li>• Points and authorities and any other supporting documents.</li><li>• Proposed order directing issuance of alternative writ.</li><li>• Proposed alternative writ with blank spaces for the date and time of a hearing on the petition. (Include a signature block for the clerk, not the judge.)</li><li>• Declaration regarding notice, as specified in rule 3.1204.</li></ul>
2.	<p>Contact the assigned writ department to reserve an available date and time for an ex parte hearing on the application for an alternative writ and to determine whether the department requires the papers listed above in Step 1 to be filed before the hearing.</p> <p>Note that some writ departments hear writ matters only on Fridays. Also note that, absent a showing of good cause or waiver by the respondent(s) and real party(ies), some departments will not issue an alternative writ unless the writ petition and application for the alternative writ have been served on respondent(s) and real party(ies) at least five days before the ex parte hearing. (See CCP § 1088, requiring service of copy of petition in conjunction with application for alternative writ; CCP § 1107, providing a five-day period for respondent(s) and real party(ies) to respond to a writ petition after receiving service of the petition.)</p>
3.	<p>Notify the respondent(s) and real party(ies) of the date and time of the ex parte hearing on the alternative writ pursuant to rule 3.1203 of the California Rules of Court. Include the details of this notification in the declaration regarding notice pursuant to rule 3.1204.</p> <p><b>Note:</b> The Court prefers at least 48 hours' notice but, upon a showing of urgency, will accept less notice.</p>
4.	<p>If the assigned writ department does not require any of the documents listed above in Step 1 to be filed before the hearing, file and serve on all parties the documents and papers as soon as possible and no later than the time of the hearing.</p>

If the court grants the application for an alternative writ, the court signs and files the proposed order directing issuance of the alternative writ that sets the petition for a



hearing on the merits. The clerk then issues the proposed alternative writ with the date and time of the hearing and provides it to the petitioner after the petitioner has paid the issuance fee in Room 102. The writ must be served upon respondent(s) and real party(ies) in the same manner as a summons in a civil action unless the court expressly orders otherwise. (See CCP §§ 1073, 1096.) Once served, the writ must be filed with a proof of service.

### Applying for a Continuance:

After a hearing has been set on a motion or on the merits of a petition, it may be continued only upon approval of the Court. If the continuance requires a change in the briefing schedule, such change must also be approved.

Step	Action
1.	<p>Present a telephone request for a continuance of the hearing to the clerk in the assigned writ department, including the reason(s) for the continuance and any necessary changes in the briefing schedule. Present the request as far in advance of the scheduled hearing date as possible.</p> <p>Upon the court's approval, the clerk will provide available dates on the court's calendar to which the hearing may be continued.</p>
2.	<p>Promptly confer with all counsel to agree upon a mutually convenient hearing date from among the dates provided by the clerk and any necessary changes in the briefing schedule.</p> <p>If counsel cannot agree to a continuance, a new hearing date and/or changes in the briefing schedule, the party seeking the continuance may apply for a continuance by noticed motion.</p>
3.	<p>Promptly present to the court a stipulation signed by all parties, including the reason for the continuance, the agreed upon hearing date and any agreed upon changes in the briefing schedule, with a proposed order.</p> <p>Pay the filing fee for the stipulation pursuant to subdivision (c) of Government Code section 70617 in Room 102.</p>
4.	<p>When the stipulation and order has been signed and filed by the Court, serve the stipulation and order on all parties.</p>

Note that these procedures do not apply when a motion is dropped from the calendar by the moving party. In such circumstances, the moving party must telephonically notify the court and all other parties as far as possible in advance of the date on which the motion is to be heard and send a confirming letter to the court with copies to the other parties.



### Dismissing a Writ Petition:

Step	Action
1.	Promptly notify the assigned writ department pursuant to rule 3.1385 of the California Rules of Court when a writ proceeding is settled or otherwise disposed of.
2.	File a dismissal of the writ proceeding in the assigned writ department within 45 days after the date of the settlement pursuant to rule 3.1385(b) or after the date specified in the notice of conditional settlement pursuant to rule 3.1385(c).

### Lodging an Administrative Record:

Step	Action
1.	When securing a date and time for a hearing on the merits of the petition, inform the clerk in the assigned writ department about the size of any administrative record in the case. Determine the department's preferences regarding the format, binding and container for the administrative record.
2.	Lodge the administrative record with the assigned writ department no later than 25 days prior to the hearing on the merits of a writ petition. If the record is not lodged by this time, some assigned writ departments may take the matter off calendar.  Consult with the assigned writ department if you wish to lodge the administrative record more than 25 days before the hearing on the merits of a writ petition.
3.	Attach a cover sheet to the administrative record and any boxes containing the record that lists the: <ul style="list-style-type: none"><li>• Case name,</li><li>• Case number,</li><li>• Date and time of the hearing.</li></ul>

At the hearing on the merits of the petition, the court will mark the administrative record as an exhibit and admit it into evidence. At the conclusion of the proceedings on the petition, the court may return the administrative record to the party who lodged it or destroy it pursuant to CCP § 1952 through 1952.3.

### The Hearing on the Merits:

All hearings on writ petitions proceed by way of oral argument. If a party wishes to present oral testimony at the hearing, the party must obtain permission pursuant to rule 3.1306 of the California Rules of Court.

If the assigned writ department uses a tentative ruling system and posts a tentative ruling on the court day before the hearing on the writ petition, a party desiring to be heard must contact the clerk and request oral argument by the time designated in the



posted tentative ruling. When requesting oral argument, the party must advise the clerk that all other parties have been notified.

### Appearing by

#### Telephone:

Parties may appear by telephone in accordance with Local Rule 2.04.

Note that some assigned writ departments permit telephonic appearances in hearings on motions only on a limited basis and in hearings on the merits of a writ petition only under compelling circumstances.

### Preparing a Judgment and Peremptory Writ:

**If the court denies the writ petition,** the party designated by the court shall, pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment denying the petition.

#### **If the court grants the writ petition:**

Step	Action
1.	The party designated by the court prepares (1) a judgment granting the writ petition and (2) a peremptory writ. The peremptory writ includes a signature block for the clerk, not the judge.
2.	Pursuant to rule 3.1312 of the California Rules of Court, prepare, serve on all parties, and present to the court a judgment granting the petition and the peremptory writ. The judgment, when approved, will be signed by the court. The clerk will issue the peremptory writ and provide it to the petitioner for service upon respondent(s) and real party(ies) after the petitioner pays the issuance fee in Room 102.
3.	Serve a copy of both the judgment granting the writ petition and the peremptory writ on the respondent(s) and real party(ies). The writ must be served in the same manner as summons in a civil action. (CCP §§ 1073, 1097.)
4.	Return the original peremptory writ with a proof of service to the assigned writ department for filing.
5.	Prepare, serve, and file in the assigned writ department a notice of entry of judgment pursuant to CCP § 664.5(a).