

1 ROBERT S. PERLMUTTER (SBN 183333)  
2 CATHERINE C. ENGBERG (SBN 220376)  
3 SHUTE, MIHALY & WEINBERGER LLP  
396 Hayes Street  
San Francisco, CA 94102  
Phone: (415) 552-7272  
Fax: (415) 552-5816

5 Attorneys for Petitioners  
6 Friends of Riviera Cliffs, Stockton Standing Up,  
7 Baykeeper's Deltakeeper Chapter, and  
8 California Sportfishing Protection Alliance

8 STATE WATER RESOURCES CONTROL BOARD

9 In the Matter of

10 California Regional Water Quality Control  
11 Board – Central Valley Region Order No. R5-  
12 2006-0078, Adopting Waste Discharge  
13 Requirements for the Port of Stockton's West  
Complex Docks 14 and 15 Dredging Project.

**PETITION FOR REVIEW  
OF WASTE DISCHARGE  
REQUIREMENTS; REQUEST  
FOR AN IMMEDIATE STAY  
AND DECLARATION IN  
SUPPORT THEREOF**

14 INTRODUCTION

15 Pursuant to California Water Code section 13329(a), Petitioners Friends of  
16 Riviera Cliffs, Stockton Standing Up, Baykeeper's Deltakeeper Chapter ("Deltakeeper"),  
17 and California Sportfishing Protection Alliance ("CSPA") (collectively "Petitioners")  
18 petition the State Water Resources Control Board ("State Board" or "this Board") to  
19 review Order No. R5-2006-0078 ("Order"), which was adopted by the California  
20 Regional Water Quality Control Board, Central Valley Region ("Regional Board") on  
21 August 5, 2006. The Order adopted Waste Discharge Requirements and a section 401  
22 Water Quality Certification ("WDRs") for the Port of Stockton's ("Port") West Complex  
23 Docks 14 and 15 Dredging Project ("Project").

24 The Project involves the dredging of approximately 130,000 cubic yards of  
25 contaminated sediment from the Stockton Deep Water Ship Channel in the San Joaquin  
26 River, immediately adjacent to the Port's so-called "West Complex" on Rough and Ready  
27 Island in San Joaquin County. The affected segment of the San Joaquin River is already  
28 one of the most degraded areas in the fragile Bay-Delta ecosystem. Furthermore, the

1 designated Dredged Materials Disposal (“DMD”) site is already contaminated with acidic  
2 dredged materials.

3           As detailed below, the Regional Board’s issuance of the WDRs and section  
4 401 certification was inappropriate, improper, and not supported by substantial evidence.  
5 Perhaps most disturbingly, the process leading to the issuance of the WDRs was  
6 characterized by a number of procedural irregularities, whereby the Regional Board  
7 adopted the WDRs on August 4, 2006 without proper notice after it had closed the  
8 hearing the previous day and voted 6-2 to continue the matter to a *future regularly*  
9 *scheduled Regional Board meeting*. In his motion to continue the matter, Chair Robert  
10 Schneider explained that a significant amount of conflicting evidence had been presented  
11 at the hearing regarding the impacts of the Project on dissolved oxygen (“DO”) levels in  
12 the receiving waters, and that this evidence required more thorough review and analysis.  
13 Acting in reliance on the Regional Board’s decision to close the public hearing and its  
14 vote to table any further discussion of this Project until at least September, representatives  
15 of Friends of Riviera Cliffs and Stockton Standing Up, as well as their attorney, left the  
16 meeting. Rather than allowing Regional Board Staff to review the DO issue and report  
17 back at a future regularly scheduled meeting, the Regional Board apparently succumbed  
18 to intense off-the-record lobbying by the Port and reversed itself the next day and  
19 approved the WDRs. Neither Petitioners nor any other interested parties—except the  
20 Port—were given notice that the Regional Board would reopen the public hearing and  
21 rehear this matter on August 4<sup>th</sup>.

22           In addition to these procedural defects, the WDRs are inconsistent with  
23 applicable water quality objectives and were issued in violation of water quality laws. As  
24 detailed in the forthcoming Memorandum of Points and Authorities,<sup>1</sup> the WDRs apply  
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26  
27 <sup>1</sup> As discussed in Paragraphs 7 and 10, below, Petitioners had planned to file the  
28 Memorandum of Points and Authorities together with this Petition and Stay Request next  
week. However, because the Port obtained a dredging permit from the Army Corps of  
Engineers and commenced dredging earlier than Petitioners had been informed,  
Petitioners are filing this Petition and Stay Request on an expedited basis.

1 contorted logic to avoid classifying the Port's dredged materials as "designated wastes"  
2 pursuant to Water Code section 13173 and 17 C.F.R. section 20210. Furthermore, during  
3 last minute changes on Friday, August 4, 2006 when most of the Petitioners were not in  
4 attendance, the Regional Board substantially weakened the WDRs with respect to  
5 attainment of dissolved oxygen standards. Specifically, at the urging of the Port, the  
6 Regional Board deleted the discharge condition prohibiting dredging operations when DO  
7 levels drop below the water quality objectives in the Basin Plan. The Regional Board  
8 also adopted the WDRs in the face of overwhelming evidence that the aeration jets the  
9 Port intends to use for dissolved oxygen mitigation do not function properly.

10 This is not the first time the Regional Board has issued WDRs for an ill-  
11 conceived and inadequately reviewed Port of Stockton dredging project. As this Board  
12 recalls, on April 22, 2005, State Board staff issued a Draft Order vacating the Regional  
13 Board's previous WDRs for the Port's West Complex Dredging Project (Order No. R5-  
14 2004-0137, hereinafter "Rescinded WDRs"). The Draft Order proposed to vacate the  
15 WDRs based on the procedural irregularities that preceded the Regional Board's adoption  
16 of the Rescinded WDRs. Namely, the Port had submitted voluminous materials just days  
17 before the Regional Board meeting, which Regional Board staff and members of the  
18 public did not have time to review prior to the issuance of the now-Rescinded WDRs.  
19 The Draft Order also concluded that there had not been sufficient analysis, either by the  
20 Port or the Regional Board, of whether dredged wastes contaminate groundwater and  
21 must be classified as "designated waste." Astonishingly, in many respects, particularly  
22 with respect to DO attainment, these WDRs are less protective of water quality than the  
23 Rescinded WDRs. The Regional Board also failed to take the steps specified in this  
24 Board's Draft Order to properly characterize the dredged waste, prior to issuing the  
25 WDRs.

26 1. **Name and Address of Petitioners:** Petitioners are: (1) Friends of Riviera  
27 Cliffs, c/o Ann Chargin, 4136 Riviera Drive, Stockton, CA 95204; (2) Stockton Standing  
28 Up, c/o Sherry Shields, 4224 Riviera Drive, Stockton, CA 95204; (3) Baykeeper's

1 DeltaKeeper Chapter, 3536 Rainier Avenue, Stockton, CA 95204, email:  
2 carrie@baykeeper.org; and (4) California Sportfishing Protection Alliance, 3536 Rainier  
3 Avenue, Stockton, CA 95204, email: deltakeep@aol.com. E-mails to the Friends of the  
4 Riviera Cliffs and Stockton Standing Up should be sent to the undersigned at  
5 perlmutter@smwlaw.com.

6           2.     **Specific Action which the State Board is Being Asked to Review:**

7 Petitioners seek review of the WDRs, issued by the Regional Board for the Project, Order  
8 No. R5-2006-0078. A copy of the Notice of Adoption of the WDRs and of Order No.  
9 R5-2006-0078 is attached as **Exhibit 1**. Petitioners also seek review of the procedural  
10 irregularities that took place on August 3 and 4, 2006.

11           3.     **Date of Action:** August 3 and 4, 2006.

12           4.     **Reasons why the Regional Board's Action was Inappropriate or**  
13 **Improper:** The Regional Board's action was inappropriate, improper, and an abuse of  
14 discretion in that:

15           a.     The Regional Board's actions violated notice and continuance  
16 procedures under the Bagley-Keene Open Meeting Act, Government Code sections  
17 11120-11132, and violated parliamentary procedures for motions for reconsideration.  
18 The WDRs were issued without notice to the public and interested parties on Friday,  
19 August 4, 2006 after the close of the public hearing on Thursday, August 3, 2006.  
20 Indeed, on August 3, the Regional Board closed the public hearing and voted 6-2 to  
21 "table" the matter to a future regularly scheduled meeting due to the Board's concerns  
22 over the information that had been presented on dissolved oxygen impacts of the Project.  
23 After interested parties and their attorney had left the hearing and after the conclusion of  
24 the Board's regular business that day, the Regional Board apparently reconsidered the  
25 motion to "table," and continued the matter "for an up or down vote" to the following  
26 day.

27           Petitioners did not receive any notice from the Regional Board that the  
28 Board would be considering the Project anew on August 4. Nor could the Regional

1 Board have lawfully complied with the Bagley-Keene Act's requirement to provide 10-  
2 days advance notice of such a meeting. *See* Gov't Code § 11125. Indeed, the only  
3 written "notification" Petitioners received was in the form of an email message to their  
4 attorneys from an attorney *representing the Port*. That email, a copy of which is attached  
5 hereto as Exhibit 2, was sent at 6:31 p.m on Thursday August 3, 2006. That email  
6 purported to provide "notice that the Regional Board, on a motion for reconsideration,  
7 voted to continue the hearing until tomorrow to have an up or down vote on the dredge  
8 permit." The earliest that any recipient of this email actually saw this message was  
9 Monday, August 8, 2006, three days after the Regional Board issued the Order.<sup>2</sup> Because  
10 Petitioners and other concerned members of the public were not properly notified that the  
11 Project would be considered by the Regional Board on August 4<sup>th</sup>, they were unable to  
12 have their attorneys or technical experts present at that meeting.

13           Moreover, instead of merely taking a vote on Friday, the Regional Board, in  
14 violation of parliamentary procedure and notice requirements, also reopened the public  
15 hearing. Regional Board staff failed to notify Petitioners Friends of Riviera Cliffs,  
16 Stockton Standing Up, or apparently any other Interested Party—except the Port—that the  
17 hearing would be reopened for additional testimony. While Ms. McNeil and Mr.  
18 Jennings happened to be in attendance when the Regional Board voted to reconsider the  
19 matter late on August 3<sup>rd</sup>, that cannot possibly substitute for the required public notice.  
20 Nor were Ms. McNeil nor Mr. Jennings informed at any time until the matter was "re-  
21 heard" on the afternoon of August 4<sup>th</sup> that the Regional Board would be accepting  
22 additional testimony despite the fact that it had closed the public hearing the previous day.  
23 Indeed, the fact that such testimony was allowed contradicts the purported "notice"  
24 provided by the Port's attorney, which stated that the hearing had been continued "until  
25 tomorrow to have an up or down vote on the dredge permit." *See* Exhibit 2. (emphasis  
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27  
28 <sup>2</sup> As indicated in automatic outgoing email messages to the sender of this email,  
Mr. Perlmutter and Ms. Engberg (the only two recipients) were out of the office until  
Monday, August 8.

1 added). Thus, while Ms. McNeil and Mr. Jennings were unexpectedly given an  
2 opportunity to speak on August 4<sup>th</sup>, they were unable to prepare any testimony in advance.

3 b. The WDRs fail to ensure that dredge waste is characterized and  
4 disposed consistent with Title 27. The Order fails to comply with the prescriptive  
5 standards for storage and management of designated wastes specified in Title 27 of the  
6 California Code of Regulations.

7 c. The WDRs fail to ensure compliance with the Basin Plan and fail to  
8 protect beneficial uses because they are not protective of dissolved oxygen levels in the  
9 receiving waters;

10 d. The WDRs are not adequate to protect biological resources from  
11 significant impacts due to dredging;

12 e. The WDRs violate federal and state anti-degradation policies;

13 f. The Regional Board's issuance of the WDRs violated the California  
14 Environmental Quality Act ("CEQA") in that the Regional Board failed to require  
15 preparation of a supplemental or subsequent environmental impact report ("EIR") to  
16 analyze the substantial changes to the Project following the Port's certification of the final  
17 EIR.

18 g. The Regional Board failed to disclose on the record impermissible ex  
19 parte contacts that occurred regarding the WDRs. As noted above, at approximately 3:30  
20 p.m. on August 3, the Regional Board closed the public hearing and voted 6-2 to continue  
21 this matter to a future regularly scheduled Board meeting, either in September or  
22 thereafter. In his motion for a continuance, Chair Robert Schneider explained that a  
23 significant amount of conflicting evidence had been presented at the hearing regarding  
24 the impacts of the Project on dissolved oxygen levels in the receiving waters, and that this  
25 evidence required more thorough review and analysis. Chair Schneider also noted that the  
26 State Water Quality Control Board had previously issued a draft order to rescind the  
27 Port's WDR's based on similar concerns to those presented at the August 3 public  
28 hearing, and stated that he wanted to be cautious this time around.

1  
2           Clearly unsatisfied with the result, representatives of the Port of Stockton  
3 approached Carrie McNeil of Deltakeeper, as well as Bill Jennings of CSPA to “cut a  
4 deal” that would allow the Port to move forward with its dredging project this season.  
5 Ms. McNeil and Mr. Jennings refused to enter into any such deal, explaining that the  
6 uncertainties surrounding the adverse impacts of the Project needed to be addressed as  
7 part of the public hearing process after the additional information and analysis requested  
8 by the Board was obtained.

9           It appears that the Port’s representatives then attempted to negotiate such a  
10 backroom deal with the Central Valley RWQCB staff and/or Board members. Indeed,  
11 members of Petitioners observed numerous Port employees and consultants consulting  
12 with Regional Board staff on this matter throughout the day on August 3<sup>rd</sup> and August 4<sup>th</sup>,  
13 and in the days that followed. Apparently, the Port’s backroom efforts succeeded: On  
14 August 4, 2006, the Board reversed its 6-2 decision from the day before, and voted  
15 unanimously to grant the Port’s WDRs even though nothing was presented on the public  
16 record that would remotely justify such a dramatic turn-around from the Board’s 6-2 vote  
17 the previous day.

18           The Port tactics—and the Regional Board’s response—are reminiscent of  
19 the backroom deal that was cut on this project in Fall 2004 and that was recounted in the  
20 Petition that led this Board’s staff to issue a Draft Order vacating the Rescinded WDRs..  
21 At that time, after the Regional Board determined that it lacked sufficient information to  
22 issue the WDRs requested by the Board, the Port heavily lobbied a variety of legislative  
23 and executive officials to pressure the Regional Board to nonetheless prematurely issue  
24 the requested WDRs. As reported in a “confidential” email that Petitioners obtained in  
25 response to a Public Records Act request to this Board, the Regional Board was even  
26 threatened that “the future of our organization [i.e., the continued existence of the  
27 Regional Board] may depend upon this matter being on the agenda.” A copy of this  
28 email is attached hereto as **Exhibit 3**.

1           Given the Board's abrupt reversal on August 4, 2006, the absence of any  
2 justification for this reversal provided at the *public* hearing, the Regional Board's failure  
3 to provide the required notice for its August 4 meeting, and the Port's pattern of behavior  
4 throughout its prolonged effort to obtain the requested WDRs, it appears that the Port has  
5 employed similar tactics this time around. It is vital to the integrity of the Regional  
6 Board's functioning that any documents or communications be disclosed. Petitioners  
7 submitted a Public Records Act request to the Regional Board on August 11, 2006 to  
8 obtain any public records of these communications and will request that any such records  
9 be included in the administrative record for the instant proceeding.

10           The Regional Board was required by the California Administrative  
11 Procedure Act to disclose any and all *ex parte* communications or contacts that were made  
12 to members of the Board. Gov't Code § 11430.50 (requiring that *ex parte*  
13 communications must be made a part of the record, all interested parties must be notified,  
14 and any party so requesting must be given an opportunity to respond after being informed  
15 of the contents of such communications).

16           To the extent that any such communications were made orally, the Regional  
17 Board was required to provide "a memorandum stating the substance of the  
18 communication, any response by [the Board member], and the identity of each person  
19 from whom the [Board member] received the communication." Gov't Code §  
20 11430.50(a)(2). As this Board's Office of Chief Counsel has advised, the APA's  
21 prohibitions on *ex parte* communications to Board members apply to the issuance of  
22 WDRs. April 17, 2001 Memorandum from Craig M. Wilson to Arthur G. Baggett, Jr., at  
23 2-4 ("Ex Parte Memo"); *see also* Cal. Gov't Code § 11430.10(a).

24           Nevertheless, no such disclosures were made prior to the Regional Board's  
25 issuance of the Order.

26           5.     **Manner in Which Petitioners Have Been Aggrieved:** Petitioners have  
27 been aggrieved by the Regional Board's actions because they have an interest in the  
28

1 Regional Board's compliance with the Porter-Cologne Water Quality Control Act and  
2 CEQA, presented substantial and legitimate concerns regarding the inadequacies of the  
3 WDRs to the Regional Board that were not properly addressed, and will be adversely  
4 affected by the Regional Board's improper actions. In addition, Petitioners were denied  
5 adequate notice of the Regional Board's adoption of the WDRs on August 4, 2006 after  
6 the Regional Board closed the public hearing on August 3, 2006 and "tabled" the matter  
7 to a future regularly scheduled Board meeting.

8           Petitioner Friends of Riviera Cliffs is an unincorporated association of  
9 residents and taxpayers of the Riviera Cliffs community in San Joaquin County, directly  
10 across the Stockton Deep Water Ship Channel from the Project. Friends of Riviera Cliffs  
11 formed largely in order to ensure that the Project does not come at the expense of the  
12 health and safety of San Joaquin Valley residents and the environment.

13           Petitioner Stockton Standing Up is a nonprofit public benefit corporation  
14 organized under the laws of the State of California. Stockton Standing Up, a coalition of  
15 concerned San Joaquin Valley residents, was formed for the specific purpose of creating  
16 awareness, educating and generating interactive community interest with Stockton  
17 residents on environmental issues affecting their health and welfare. The organization is  
18 concerned with promoting responsible governmental action regarding those issues and to  
19 act to protect those who are generally affected.

20           Petitioner DeltaKeeper is a project of Baykeeper, a nonprofit public benefit  
21 corporation organized under the laws of the State of California. DeltaKeeper has  
22 approximately two thousand members in and around the San Francisco Bay area and the  
23 Sacramento San Joaquin Delta. DeltaKeeper is dedicated to the preservation, protection,  
24 and defense of the environment, wildlife, and natural resources of the San Francisco Bay  
25 and Delta watershed. The organization alerts the public to potential hazards to these  
26 waters, and supports effective enforcement of federal and state laws for protection of the  
27 environment.

1           Petitioner California Sportfishing Protection Alliance is a nonprofit public  
2 benefit corporation organized under the laws of the State of California. CSPA has  
3 thousands of members who reside and recreate throughout California. Members are  
4 citizens who, in addition to being duly licensed sport fishing anglers, are interested in  
5 preservation and enhancement of California's public trust fishery resources and vigorous  
6 enforcement of California's environmental laws. CSPA members have been involved for  
7 decades in public education and advocacy efforts to protect and restore the public trust  
8 resources of the Bay-Delta, and the San Joaquin River and Stockton Deep Water Ship  
9 Channel.

10           Each of the Petitioners and/or their members have a direct and beneficial  
11 interest in the Regional Board's actions and compliance with the applicable State laws.  
12 That interest has been directly and adversely affected by the Regional Board's issuance of  
13 the WDRs, which was improper as set forth in this Petition and which would cause  
14 substantial and irreversible harm to the environment.

15           6.     **State Board Action Requested:** Petitioners respectfully request that the  
16 State Board: (a) immediately stay the Regional Board's action adopting Order No. R5-  
17 2006-0078 and approving WDRs for the Project until the issues raised by Petitioners can  
18 be fully resolved; (b) hold a hearing to consider the issues raised herein; (c) determine  
19 that the WDRs were inappropriately and improperly issued; and (d) rescind the Regional  
20 Board's Order issuing the WDRs.

21           7.     **Statement of Points and Authorities:** A Statement of Points and  
22 Authorities is forthcoming. Petitioners had planned to file the Points and Authorities  
23 concurrently with this Petition and Request for Stay early next week. Petitioners planned  
24 on this schedule because Petitioners' attorney had relied on statements made by the Army  
25 Corps of Engineers ("ACOE") attorney responsible for reviewing the ACOE section 404  
26 dredging permit that the 404 permit would not be issued until she had a chance to review  
27 the draft permit and related documents, and that as of the end of the day on Wednesday,  
28 August 16, 2006, the Corps' attorney had "not [yet] been provided any of these

1 documents for review.” See Exhibit 4. However, as discussed below in paragraph 10, on  
2 Thursday, August 17, 2006, Petitioners’ attorney learned that the Port had in fact  
3 commenced dredging on Wednesday, August 16. Petitioners are therefore expediting this  
4 Petition and Request for Stay and plan to file the Points and Authorities early next week.

5       8.     **Copy of Petition Sent to Regional Board and the Discharger:**

6 Petitioners have sent a copy of this Petition and Stay Request to the Regional Board and  
7 to the discharger (i.e., the Port of Stockton).

8       9.     **Statement of Substantive Issues and Objections Raised:** All of the

9 substantive issues and objections raised in this Petition were raised before the Regional  
10 Board.

11       10.    **Stay:** Pursuant to section 13321 of the California Water Code and 23

12 C.C.R. section 2053, Petitioners request that the State Board immediately stay the  
13 Regional Board’s Order issuing WDRs during its period of review.

14            Petitioners filed this Request for an *Immediate* Stay as soon as practicable  
15 after they learned that the Port had commenced dredging. Prior to commencing dredging  
16 operations, the Port was required to obtain a 404(d) dredging permit from the ACOE. In  
17 an attempt to determine when the permit would be issued, on August 11, 2006, Catherine  
18 Engberg, attorney for Petitioners, telephoned Lisa Clay, the ACOE attorney who had  
19 identified herself as the principle point of contact for questions regarding the Project. Ms.  
20 Clay was on vacation that week and returned on Monday, August 14. On August 11,  
21 2006, Ms. Engberg also left a message with ACOE staff member Marc Fugler inquiring  
22 about the timing of the 404(d) permit. Mr. Fugler did not return her call. On August 14,  
23 2006, Ms. Sheridan Pauker, also counsel to Petitioners, left a message for Ms. Clay  
24 regarding the 404(d) permit. As noted above, on August 16, 2006, Petitioners’ counsel  
25 received an email from Ms. Clay stating that the 404(d) permit had not yet been issued  
26 and would not be issued until she had an opportunity to review it. See Exhibit 4. Based  
27 on this information, Petitioners were planning to file their State Board appeal next week.  
28 However, on the afternoon of August 17, 2006, Petitioners learned that ACOE had in fact

1 issued the 404(d) permit the previous day and that the Port had immediately commenced  
2 dredging.

3  
4 **A. Substantial and Irreparable Harm to Petitioners and the Public**  
5 **Interest Will Result if an Immediate Stay is Not Granted.**

6 Petitioners are a group of environmental organizations and citizen groups  
7 with thousands of members who live in the Central Valley and the surrounding region.  
8 Their members fish, swim, use, consume or otherwise enjoy the waters of the Central  
9 Valley region, including the San Joaquin River and Deep Water Ship Channel.

10 The Port's current dredging activities *permanently* deepen the DWSC,  
11 which reduces channel flow and increases biochemical oxygen demand. Because the  
12 current dredging activities increase hydraulic residence time, these activities will  
13 exacerbate the dissolved oxygen deficiencies in the Channel. Furthermore, the Port's  
14 placement of the dredged soils will further contaminate groundwater at the disposal site.

15 The DWSC is currently listed as impaired for chlorpyrifos, DDT, diazinon,  
16 Group A pesticides, pathogens, mercury, unknown toxicity and dissolved oxygen on the  
17 Clean Water Act section 303(d) list. Petitioners and/or their members once used the  
18 DWSC for fishing and swimming activities. However, over the years, as the Channel has  
19 gotten deeper and deeper with dredging operations and more and more polluted with  
20 heavy metals and toxics, Petitioners are losing their ability to conduct these activities in  
21 the Channel. The DO levels are insufficient to sustain fishing activities and the waters  
22 are much too polluted for swimming. Based on Petitioners' past experience, the Port's  
23 current dredging activities are causing significant and irreversible harm to the water  
24 quality and biological health of the DWSC.

25 **B. A Stay Will Not Result in Substantial Harm to Other Interested**  
26 **Persons or the Public.**

27 The Port of Stockton will not suffer substantial harm if the stay is granted.  
28 Presumably, the Port stands to gain economically if the Project is allowed to go forward.

1 However, these lost economic gains should not be viewed as actual economic losses since  
2 the Port had no right to proceed based on unlawfully issued WDRs. Furthermore, the  
3 Port's lost economic gains are outweighed by the permanent environmental degradation  
4 that would take place if the stay is denied.

5 **C. The Regional Board's Action Raises Substantial Questions of Law on**  
6 **Which Petitioners are Likely to Prevail.**

7 This Petition and the forthcoming Memorandum of Points and Authorities  
8 set forth facts showing fatal procedural irregularities that preceded the adoption of the  
9 WDRs. Specifically, the WDRs were adopted without proper notice to the public after  
10 the close of the public hearing on the Project. Moreover, the WDRs apply contorted logic  
11 to avoid classifying the Port's dredged materials as "designated wastes" pursuant to  
12 Water Code section 13173 and 17 C.F.R. § 20210, and they repeat the errors that led this  
13 Board's staff to issue the Draft Order to rescind the WDRs. As discussed above, during  
14 last minute changes on Friday, August 4, when most of the Petitioners were not in  
15 attendance, the Regional Board substantially weakened the WDRs with respect to  
16 attainment of dissolved oxygen standards. The WDRs also improperly rely on aeration jet  
17 mitigation that has proven to be inadequate. The WDRs also fail to protect biological  
18 resources and fail to comply with state and federal antidegradation policies. In its rush  
19 for Project approval, the Port also failed to complete a supplemental or subsequent EIR  
20 required by CEQA due to the substantial changes to the Project since the original EIR was  
21 certified.

22 11. **Request for Hearing:** Pursuant to 23 C.C.R. section 2053, Petitioners  
23 request that the State Board hold a hearing to consider their Request for an Immediate  
24 Stay.

25 **CONCLUSION**

26 For the foregoing reasons, Petitioners respectfully request that the State  
27 Board: (a) *immediately* stay the Regional Board's Order issuing WDRs until the issues  
28 raised by Petitioner can be fully resolved; (b) hold a hearing to consider the issues raised

1 herein; (c) determine that the WDRs were inappropriately and improperly issued; and (d)  
2 rescind the Regional Board's Order issuing the WDRs.

3 **DECLARATION**

4 I, Catherine C. Engberg, declare:

5 I am an attorney licensed to practice law in the State of California and  
6 represent Petitioners in the above-captioned matter. The statements set forth above are  
7 true and based on my personal knowledge, except for those matters stated upon  
8 information and belief, and as to those matters I believe them to be true. If called to  
9 testify, I could and would competently so testify.

10 I declare under penalty of perjury under the laws of the State of California  
11 that the foregoing is true and correct. This declaration is made in San Francisco,  
12 California.

13  
14 Dated: August 18, 2006

SHUTE, MIHALY & WEINBERGER LLP

15  
16 By: 

17 CATHERINE C. ENGBERG

18 Attorneys for Petitioners  
19 Friends of Riviera Cliffs, Stockton Standing Up,  
20 Baykeeper's Deltakeeper Chapter, and  
California Sportfishing Protection Alliance

21 Attachments:

- 22 Exhibit 1 Notice of Adoption of WDRs and Order No. R5-2006-0078  
23 Exhibit 2 Email from Melissa Thorne to Catherine Engberg  
24 Exhibit 3 Email to Tom Pinkos from Jack Del Conte re: Confidential State  
Board Call Regarding Port of Stockton Dredging (Sept. 27, 2004)  
25 Exhibit 4 Email from Lisa Clay to Sheridan Pauker (Aug. 16, 2006)

26  
27 P:\Riviera\MAT2\2006 WDRS\cce003 (2006 petition).wpd  
28