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8 *Attorney for Petitioner Center for Biological Diversity*

9 **BEFORE THE CALIFORNIA SUPERIOR COURT**
10 **COUNTY OF KERN**

11 Center for Biological Diversity, a non-profit
12 organization,

13 Petitioner,

14 v.

15 Central Valley Regional Water Quality Control
16 Board,

17 Respondent,

18 and

19 Valley Water Management Co.,

20 Real Party in Interest.

) Case No. _____

) VERIFIED PETITION FOR WRIT OF
21 MANDATE

) [Cal. Code of Civ. Proc., §§ 1094.5, 1085; Water
22 Code, § 13330]

1 **INTRODUCTION**

2 1. The Center for Biological Diversity (the “Center”) hereby petitions this Court for an
3 administrative Writ of Mandate pursuant to California Code of Civil Procedure, section 1094.5,
4 directing the Respondent Central Valley Regional Water Quality Control Board (the “Regional Board”)
5 to rescind Resolution R5-2018-0015 (the “Resolution”), which allows ongoing and indefinite waste fluid
6 discharge that has led to documented and continued groundwater degradation.

7 2. The Regional Board’s Resolution authorizes Real Party in Interest Valley Water
8 Management Company (the “Real Party” or “Valley Water”) to continue its practice of discharging
9 wastewater directly into unlined pits at two of its facilities – McKittrick 1 and 1-3.

10 3. The discharged wastewater has leached into the soil and groundwater underlying the pits.
11 The Regional Board’s staff report confirmed that Valley Water’s discharges into these unlined pits have
12 migrated through the soil and have caused significant contamination in multiple groundwater resources.
13 The documented groundwater pollution has spread past the water table and into deeper aquifers.

14 4. The plume of contaminants has also migrated laterally for miles, past even the outermost
15 monitoring well. Due to the harmful constituents contained in oil industry wastewater, the migration into
16 groundwater has resulted in water quality degradation. Nearby water supply wells used for agriculture
17 have already suffered water quality degradation.

18 5. Petitioner seeks review of the Regional Board’s April 5, 2018 adoption of Resolution R5-
19 2018-0015, which allows continued pollution and contamination of state waters in violation of, *inter*
20 *alia*, the Water Code, the state’s Anti-degradation Policy, and the Tulare Lake Basin Plan. In adopting
21 the Resolution, the Regional Board failed to perform a duty required by law.

22 6. The Center has no other plain, speedy, and adequate remedy at law.

23 7. In the alternative, the Center petitions this Court for a traditional Writ of Mandate
24 pursuant to section 1085 of the California Code of Civil Procedure directing the Regional Board to meet
25 its nondiscretionary duty to protect the Central Valley’s groundwater resources by issuing a cease and
26 desist order halting discharge activities at the McKittrick 1 and 1-3 wastewater disposal pits.

1 **JURISDICTION AND VENUE**

2 8. The Court has jurisdiction to review this case pursuant to section 1094.5 and, in the
3 alternative, section 1085 of the California Code of Civil Procedure.

4 9. Jurisdiction is also proper under section 13330 of the Water Code. The Center was
5 aggrieved by the Regional Board’s Resolution. The Center filed a timely appeal to the State Water
6 Resources Control Board, but the agency took no action within 90 days.

7 10. Venue is proper under subdivision (b) of section 393 of the Civil Code of Procedure
8 because the Regional Board is a public agency and Kern County is where the cause of action arose.

9 **PARTIES**

10 11. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a nonprofit,
11 public interest environmental organization dedicated to the protection of native species and their habitats
12 through science, policy, and environmental law. The Center’s Climate Law Institute works to reduce
13 greenhouse gas emissions and other air pollutants, conserve natural resources, and minimize the public
14 health risks facing communities exposed to industrial pollution. Specific objectives include addressing
15 the adverse impacts of oil and gas operations such as waste fluid disposal’s impact on groundwater. The
16 Center has more than 40,000 members, including many members who reside in California’s Central
17 Valley. Center members have recreational, scientific, and educational interests in the region at issue. The
18 Center’s members therefore will be directly, adversely, and irreversibly affected by the Regional
19 Board’s Resolution allowing continued waste fluid disposal resulting in groundwater degradation. The
20 Center participated extensively in the administrative process culminating in the Resolution, submitting
21 written comments during the public comment period and filing an administrative appeal to the State
22 Water Resources Control Board.

23 12. The CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD is the
24 largest of nine regional water boards in California. The Regional Board regulates water discharge
25 activities for all or part of 38 different counties in the state, including Kern County. Its mission is to
26 preserve, enhance, and restore the quality of California's water resources and drinking water for the
27 protection of the environment, public health, and all beneficial uses, and to ensure proper water resource
28 allocation and efficient use, for the benefit of present and future generations.

1 13. VALLEY WATER MANAGEMENT COMPANY is a corporation based in Bakersfield,
2 California. It owns and operates two interconnected wastewater pit disposal facilities named McKittrick
3 1 and McKittrick 1-3 near the town of Buttonwillow in Kern County. The McKittrick 1 and 1-3
4 wastewater pit disposal facilities are the subject of the Regional Board’s Resolution and continue to
5 discharge oil industry wastewater into unlined pits.

6 **BACKGROUND**

7 14. Oil industry waste fluid, often called “produced water,” is a byproduct of oil and gas
8 production. In California, for every barrel of oil produced, 15 to 20 barrels of produced water also flow
9 to the surface.

10 15. Produced water can contain high concentrations of harmful chemicals such as benzene, a
11 known carcinogen. Other contaminants include salts, chloride, boron, toluene, ethylbenzene, and
12 xylenes.

13 16. Valley Water receives produced water from area oil and gas companies and discharges
14 this waste fluid into a series of unlined earthen pits at two adjoining and interconnected facilities called
15 McKittrick 1 and 1-3 (collectively, the “Facility”.) In total, the Facility is made up of roughly 80 pits
16 that occupy about 150 acres. The produced water in those pits percolates into the soil and groundwater
17 or evaporates into the air.

18 17. The Facility is located near the community of Buttonwillow and a number of farms.

19 18. Valley Water discharges as much as 4.83 million gallons of wastewater into these pits in
20 a single day. On average, Valley Water discharges approximately 2.8 million gallons per day.

21 19. On June 26, 2017, the Regional Board, through its Executive Officer, issued a
22 Monitoring and Reporting Program (“MRP”) that would have, *inter alia*, compelled Valley Water to
23 disclose the chemicals in its discharged wastewater and evaluate the extent to which the contaminants
24 have migrated into and polluted area groundwater.

25 20. On July 5, 2017, Valley Water asked the Regional Board to rescind the MRP based in
26 part on the claim that such requirements would be too burdensome. The Executive Officer withdrew the
27 MRP.

1 21. On or about February 2, 2018, the Regional Board released a staff report regarding
2 Valley Water’s discharges at the Facility. The staff report provided an assessment of the discharges at
3 the Facility, and concluded that discharges at the Facility have caused groundwater pollution.

4 22. Specifically, the staff report finds that the discharged waste fluid contains benzene,
5 toluene, ethylbenzene, xylenes, chloride, and total dissolved solids. The staff reports notes that many of
6 those contaminants were detected at concentrations far exceeding state maximum contaminant levels for
7 drinking water. Samples taken from discharged wastewater found benzene, a known human carcinogen,
8 at concentrations as high as 400 micrograms per liter—400 times the legal limit for drinking water.

9 23. After an analysis of the waste discharge and the groundwater, the Regional Board’s own
10 staff report has confirmed, *inter alia*, that:

- 11 a. Valley Water’s discharges into these unlined pits have percolated through the soil
12 and have caused degradation in multiple groundwater sources.
- 13 b. The groundwater pollution has spread to the water table, or “alluvium,” which
14 “serves as an aquifer for water supply wells.”
- 15 c. Contaminants from the Facility have also migrated into deeper formations, down
16 to the Upper Tulare sand, which also supplies water supply wells, and to the
17 deeper Tulare regional aquifer, which also serves water supply wells.
- 18 d. The contaminants have migrated laterally at least 2.2 miles away from the
19 Facility, and may have spread “far beyond” the last monitoring well capable of
20 detecting contaminants.

21 24. Water that had been deemed suitable for beneficial use may no longer be usable due to
22 the contamination. Water sampling indicates that groundwater that had been high quality now have
23 much higher concentrations of contaminants.

24 25. The staff report concludes that “[s]everal lines of evidence” indicate that “produced
25 wastewater from the Valley Water McKittrick 1 & 1-3 ponds has migrated and continues to migrate
26 down-structure through the previously unsaturated sediments of the upper Tulare [formation] and has
27 also impacted groundwater quality in the regional aquifer in the deeper Tulare [formation].”

1 26. On February 26, 2018, the Center submitted written comments in advance of the
2 Regional Board’s hearing on the matter. The Center urged the Regional Board to order the immediate
3 cessation of wastewater discharges at the Facility.

4 27. On April 4, 2018, the day before the Regional Board’s decision, staff informed the public
5 for the first time that the staff for the Regional Board had drafted (1) a revised monitoring and reporting
6 program, (2) a revised tentative resolution, and (3) a revised response to comments. Revisions included
7 the addition of a finding in the tentative Resolution claiming that certain water could be de-designated as
8 groundwater for beneficial use. This finding was added without fair, timely, and equal opportunity for
9 the public to question or comment on the basis for the finding, and the finding is not supported by the
10 weight of evidence.

11 28. At the Regional Board’s April 5, 2018 meeting, staff presented its report and offered a
12 proposed resolution, which proposed a new Monitoring and Reporting Program and solicited the
13 Regional Board for direction on whether to (1) regulate the discharges under existing waste discharge
14 orders, which the staff conceded were inapplicable; (2) prepare a timetable for compliance with waste
15 discharge requirements or a cease and desist order; and/or (3) gather more information via a report of
16 waste discharge that would lead to individual discharge requirements for the Facility.

17 29. The Regional Board’s action failed to address the discharge. It adopted Resolution R5-
18 2018-0015, directing the staff to further explore options (1) and (3), with no timetable for further
19 decisions. The Regional Board’s open-ended Resolution directs staff to “determine whether Valley
20 Water’s discharge may be regulated under [existing waste discharge orders] or whether Valley Water
21 should be ... regulated under an updated set of individual waste discharge requirements.”

22 30. Thus, despite the documented contamination and clear evidence that the source is Valley
23 Water’s Facility, the Regional Board’s Resolution does not halt or even mitigate this ongoing
24 groundwater pollution. The Regional Board rejected the only option (option (2)) that could have
25 included a cease and desist order or a timetable for compliance.

26 31. The Regional Board’s Resolution does not contain any provision that requires
27 compliance with applicable Waste Discharge Requirements prohibiting groundwater pollution. There
28 are no provisions in the Resolution that would otherwise stop, restrict, or reduce Valley Water’s

1 discharges; the monitoring program is an ineffective means of stopping further groundwater
2 degradation; and the Resolution contains no remediation measures to address the pollution that has
3 already occurred.

4 32. The Regional Board’s Resolution is not supported by substantial evidence that would
5 support a finding that the discharges or Resolution would comply with applicable law. The Resolution is
6 not supported by substantial evidence that the Resolution would protect groundwater quality.

7 33. On May 6, 2018, pursuant to Water Code section 13320 and Title 23 of the California
8 Code of Regulations, sections 2050 and 3867, the Center petitioned the State Water Resources Control
9 Board (“State Board”) to review and reconsider the Regional Board Resolution.

10 34. The State Board acknowledged receipt of the petition, but did not respond further within
11 the 90 days allotted under section 13330 of the Water Code.

12 **CLAIMS FOR RELIEF**

13 **First Cause of Action**

14 **[Writ of Mandate, violation of Anti-Degradation Policy]**

15 35. Petitioner incorporate all previous paragraphs as if fully set forth herein.

16 36. California’s “Anti-degradation Policy,” adopted by the State Water Resources Control
17 Board as Resolution No. 68-16, states, “Any activity which produces or may produce a waste or
18 increased volume or concentration of waste and which discharges or proposes to discharge to existing
19 high quality waters will be required to meet waste discharge requirements which will result in the best
20 practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will
21 not occur and (b) the highest water quality consistent with maximum benefit to the people of the State
22 will be maintained.”

23 37. The Regional Board has a clear and present legal duty to adhere to the Anti-degradation
24 Policy requiring the prevention of water degradation through nuisance and pollution.

25 38. The Regional Board failed to perform its duty by adopting the Resolution, which does not
26 assure that the pollution or nuisance will not occur. To the contrary, the Resolution allows the pollution
27 and nuisance to continue with no deadline for halting the discharge.

1 levels (MCLs) specified in [designated] provisions of Title 22 of the California Code of Regulations....”
2 (*Id.* at p. III-7.)

3 59. The water affected by Valley Water’s discharges are designated MUN – water that may
4 serve as drinking water or other beneficial uses requiring high quality water. Valley Water’s waste
5 discharges contain high concentrations of contaminants well in excess of the state’s regulatory limits.
6 Valley Water’s discharges have caused groundwater designated as MUN to now contain chemicals in
7 excess of legal limits.

8 60. The Regional Board has a duty to ensure that discharges comply with the Tulare Lake
9 Basin Plan under section 13263 of the California Water Code.

10 61. The Regional Board’s Resolution is inconsistent with the Tulare Lake Basin Plan.

11 62. The Regional Board has also acted beyond the scope of its authority, has acted arbitrarily
12 and capriciously, and has abused its discretion.

13 63. The Resolution is not supported by the weight of the evidence.

14 64. The Center has a beneficial interest in enforcing the Regional Board’s duty to enforce the
15 Tulare Basin Plan to protect the state’s groundwater and has a legal right to the performance of that
16 duty. The Center has no plain, speedy, and adequate remedy at law other than the relief sought herein.

17 65. Because of the quasi-adjudicative nature of the Regional Board’s decision to adopt the
18 Resolution, the Center seeks relief under section 1094.5 of the Code of Civil Procedure. In the
19 alternative, the Center requests relief under section 1085 of the Code of Civil Procedure to the extent
20 that the Court deems section 1085 is applicable.

21 **Fourth Cause of Action**

22 **[Writ of Mandate, failure to meet nondiscretionary duty]**

23 66. Petitioner incorporate all previous paragraphs as if fully set forth herein.

24 67. The Regional Board has a nondiscretionary duty to protect the region’s groundwater from
25 pollution and degradation. (Water Code, § 13001.)

26 68. The Regional Board has a duty to issue cease and desist orders that would halt the
27 discharges. (Cal. Code of Regs., tit. 27, § 22190.) It also has a duty to issue waste discharge
28

1 requirements that “ensure” compliance with all applicable water protection laws. (Water Code, §
2 13377.)

3 69. Despite having known of ongoing groundwater contamination for years in violation of
4 state law, the Regional Board has taken no action to stop these harmful discharges.

5 70. The Center has a beneficial interest in enforcing the Regional Board’s duty to act to
6 protect the state’s groundwater and has a legal right to the performance of that duty. The Center has no
7 plain, speedy, and adequate remedy at law other than the relief sought herein.

8 71. The Regional Board’s inaction is a violation of its duty to protect the region’s
9 groundwater. The Center seeks relief under section 1085 of the Code of Civil Procedure.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioner respectfully requests that the Court:

12 (1) Issue a writ of mandate declaring Regional Board Resolution R5-2018-0015 unlawful and
13 ordering the Regional Board to rescind that Resolution;

14 (2) In the alternative, issue a writ of mandate declaring the Regional Board’s inaction unlawful;

15 (3) Issue a writ of mandate ordering the Regional Board to issue a cease and desist order that
16 requires Valley Water to immediately halt any and all discharges at its McKittrick 1 and McKittrick 1-3
17 facilities;

18 (4) Issue a writ of mandate ordering the Regional Board to commence proceedings for
19 remediation, mitigation, and restoration measures for the affected groundwater.

20 (5) Issue any other injunctive relief, as appropriate under California Code of Civil Procedure
21 section 525, et seq.;

22 (6) Award Petitioner costs and fees associated with this litigation, including reasonable
23 attorneys’ fees and expert witness costs, as authorized by California Code of Civil Procedure section
24 1021.5, and any other applicable provisions of law; and

25 (7) Grant other such relief as the Court deems just and proper.
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Respectfully submitted,

Dated: September 5, 2018

CENTER FOR BIOLOGICAL DIVERSITY



By:
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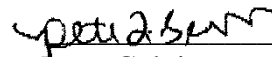
Attorney for Petitioner

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VERIFICATION

I, the undersigned, say:

I am the Director of Programs for the Center for Biological Diversity, the Petitioner in this proceeding. The facts alleged in the above petition are true of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on September 5, 2018 at Shelter Cove, California.



Peter Galvin