



April 7, 2008

The Little Hoover Commission  
925 L St., Suite 805  
Sacramento, CA 95814

Re: Written Comments and Response to Questions Presented on the CA Water Boards

Dear Commissioners:

Thank you for the opportunity to provide my perspective on the roles of the state and regional boards, and the challenges they face to secure water quality in California. I look forward to participating in your hearing on April 24, 2008. Below are my written comments in response to the questions that were submitted.

**What are the state's most pressing water quality issues, and does the state have the appropriate governance structure to properly respond to current and future issues? What changes are needed? What are the key barriers in the state to improving water quality?**

A. The Most Pressing Water Quality Needs:

The most pressing water quality issue is the quality of groundwater used as a source of drinking water, particularly in small and low-income communities.

Statewide, nearly half of Californians rely entirely or in-part on groundwater for their drinking water supply.<sup>1</sup> While most of the state is able to provide safe drinking water, key areas, primarily in the poorest areas of the state, do not have safe water to drink due to groundwater contamination. The exact number statewide is not known, but in Tulare County, 20% of our small public water systems are unable to supply safe drinking water on an on-going basis due to nitrate contamination,<sup>2</sup> and over 40% of the 181 private wells tested by the State Water Board's GAMA program in 2006 were over the MCL<sup>3</sup> for

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<sup>1</sup> <http://www.sgah2o.org/sga/educated/groundwater/>.

<sup>2</sup> California Department of Health Services. "Local Primacy Agency Annual Evaluation Report, Tulare County, Fiscal Year 2005-2006."

<sup>3</sup> Maximum Contaminant Levels (MCLs) are the legal limit for a contaminant in a public drinking water supply, as established under the Safe Drinking Water Act.

nitrate.<sup>4</sup> The number of public water systems in violation of the nitrate standard increases significantly each year.<sup>5</sup> While nitrate does occur naturally, nitrate at the levels at which it is considered unsafe in drinking water is understood to be due to human activities. In other words, this is an entirely preventable problem that we have created by not protecting our groundwater quality. It is the Central Valley Regional Water Quality Control Board's mandate to protect the quality of our region's groundwater, and this is their failure.

Unfortunately, this severe water quality problem disproportionately impacts our smallest and poorest communities, farm labor camps and schools. These areas often cannot afford to buy alternative supplies, build new treatment plants, or access new sources. Additionally, these areas are also home to some of the most sensitive populations, which are often subject to multiple sources of contamination (pesticide drift, air contamination, etc.). I work with many residents that have to raise a family on \$13-16,000 a year, and have to pay up to 10% of their income for water they cannot drink.

While our poorest communities have the most urgent health needs currently, this same issue will only increase in state-wide importance as other areas of the state look to store more water in groundwater aquifers in our state's agricultural heartland. So, while San Francisco and LA may have some of the best water quality in the world, many other areas of the state have an urgent and severe water quality crisis that is a result of inaction by the regional and state water boards, and will likely affect more and more Californians' ability to secure safe and affordable drinking water in the coming years.

## B. Governance Structure

There are a number of ways that the current governance structure has contributed to allowing our sources of drinking water to become contaminated. First, there are a number of big-picture governance problems that are a result of the way that our water governance has evolved at the state and federal level.

1. Water governance in California is too disperse and segregated, without any one agency exercising oversight over the whole system, and with many single-purpose entities able to ignore the many diverse local water needs.

Water quality is controlled by the State and Regional Boards, water infrastructure and planning is controlled by the Department of Water Resources, and drinking water quality is regulated by the Department of Public Health (just to name a few of the state-level water agencies). One agency is responsible for regulating the output (drinking water), but at least two other agencies are responsible for protecting and securing the input (the water quality and water supply for both surface and groundwater). Therefore, there is no

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<sup>4</sup> California Water Boards Ambient Groundwater Program. <http://www.waterboards.ca.gov/gama/voluntry.html#tulare>.

<sup>5</sup> Number of violations are reported in the annual violation reports available at <http://ww2.cdph.ca.gov/certlic/drinkingwater/Pages/Publications.aspx>; Statewide, 41 systems violated the nitrate MCL in 2004; 87 systems violated the MCL in 2005 and 99 systems violated the MCL in 2006.

one agency that oversees the whole system. As a result, there is no feedback mechanism to ensure that we prevent contamination before it becomes widespread, when it becomes much more expensive to either clean-up or treat.

Unfortunately, the local agencies generally do not play this role either, except in major metropolitan areas. We have allowed rural areas to create water districts that are controlled by agricultural interests and have as their primary mission, securing agricultural water supplies, without having to provide safe drinking water. Small and low-income communities (often of people that work in those same industries) have instead been left to fend for themselves to find a supply and finance the operation and maintenance of a public drinking water system. As a result, farm and processing operations have not had to internalize the costs of disposing of their waste into our groundwater and using high volumes of nitrates and pesticides. Furthermore, small and low-income communities often do not have the economy of scale, nor political or socio-economic power, to secure a safe source and operate and maintain a public drinking water system, particularly when source waters are contaminated.

If no one agency is charged with providing safe water to California residents (either state-wide, regionally or locally), and overseeing the whole system (source water protection and delivery), it will be virtually impossible to change.

2. The Central Valley Regional Water Quality Control Board's geographic area is too large, resulting in an inability to adequately address major sources of contamination.

The Central Valley region covers approximately 40% of the state, which ranges drastically in ecosystems, economies, and population. There are three different offices, although nearly all of the board meetings are held in Rancho Cordova, a 600 mile roundtrip journey for people that want to participate in meetings from our area. Each basin has a different list of priorities and beneficial uses, and it can be overwhelming to address each of these priorities. For example, the irrigated lands program has to cover 28,000 growers and over 5million acres of land, and that only includes surface water dischargers. The program needs to be expanded significantly to include growers that just discharge into groundwater. The Board has struggled to figure out how to adequately address this issue with regard to surface water dischargers, but hasn't even started to deal with the more complicated issue of groundwater. The area needs to be broken down further to make it more manageable so that the Board and its staff are not paralyzed and overwhelmed by the scope of its mandate.

With a smaller geographic area, the Boards can focus-in on local water challenges. For example, in the northern San Joaquin River Basin and the Southern Sacramento River Basin, the Delta and surface water quality may be the top priorities that need to be addressed. In the Tulare Lake Basin, we are a closed basin and groundwater quality may be our biggest challenge. By allowing the board to focus-in on local priorities, it makes its mandate more manageable. The smaller region will also facilitate participation from stakeholders that cannot drive 600 miles regularly to participate in meetings.

With smaller regions, however, there need to be more meaningful oversight to ensure that each region is making progress on its water quality needs and not allowing certain water quality concerns to fall behind because of dominant local politics. For example, in the Central Valley there is *no regulatory program at all* for major industries such as feedlots, poultry farms, or groundwater protections from irrigated agriculture, and yet there are extensive regulatory requirements and minimum penalties for small community wastewater systems. This clearly shows the reality of who has power in our region and who does not. And while all sources of contamination should be controlled, we should not allow a region to just regulate the easy targets that cannot put up a fight, and avoid dealing with major dischargers that have a stronghold on the local and regional power structure. Multiple appeals have asked the State Board to step in, however those requests have repeatedly been dismissed without any real explanation.

3. There is no ability to bring citizen suits on groundwater quality, so we must rely entirely on the Regional board to do this for us.

The federal Clean Water Act only protects surface waters, and may require groundwater protections to the extent necessary to protect surface water quality. However, the State's Porter Cologne Water Quality Control Act does mandate that the state protect the quality of all the waters of the state, including groundwater and surface water. Unfortunately, while the federal law allows for citizen suit enforcement of its surface water protections, the state law does not. As a result, enforcement of groundwater quality protections can only be accomplished by the State. Because the state and regional boards are often under-staffed, many violations continue without any action. Without a team of citizen enforcers, industries know that they can continue to do business as usual. This is yet another reason why the groundwater quality has continued to worsen, while surface water quality in many areas has seen drastic improvements.

4. Many industries have been allowed to operate without permits.

There is a loophole in the Water Code that allows dischargers to operate without any regulation after the Regional Board has failed to act within a set time limit.<sup>6</sup> This means that industries can operate without any requirements from the regional board to protect water quality, while the Regional Boards look to other priorities. While it is understandable that industries should not have suffer by being entirely prohibited from operations because the Regional Board has not done its job, it means there is little to no pressure on the Regional Boards to create permits at all. For example, hundreds of new dairies that began operating since Oct. 2005 still have no permit from the Regional Board. Feedlots, such as the Harris Ranch on I-5, have no water quality permits and yet are able to operate giant polluting facilities. Clearly, this system is not working.

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<sup>6</sup> See CA Water Code Section 13264.

### C. Specific Key Barriers to improving groundwater quality.

On a more concrete level, there are a number of specific key barriers that we face to improving groundwater quality.

1. There are entire programs that are missing to protect groundwater from key industries.

In the Central Valley Region there is no program, at all, that regulates groundwater contamination from fertilizers and other soil additives from irrigated agriculture.<sup>7</sup> In addition there is no program that regulates any confined animal feeding operations other than dairies (ex. feed lots, poultry farms, etc.).<sup>8</sup> And virtually none of the hundreds of new dairies that have begun operating after the “existing dairy” cut-off date, in Oct. 2005, have permits in place today.<sup>9</sup>

2. Many permits (WDRs) that are in-place, are inadequate to protect groundwater.

Unfortunately, there are a number of programs that have permits in place that have not been updated even though studies have shown that the requirements allow for groundwater degradation. For example, a staff report showed that 90% of the food processors that apply waste to land as a means of disposal are causing groundwater to be degraded.<sup>10</sup> Even though this report was issued in 2005, I was informed that no permit has been revisited because staff time has been allocated to other priorities.

Another challenge is that WDRs often do not require monitoring so it is often impossible to know whether the requirements that are in place are adequate to protect groundwater. For example, in addition to food processing facilities, the Title 27 standards that used to guide dairy facilities was shown to be inadequate to protect groundwater.<sup>11</sup> But because virtually none of the food processing or dairy permits required groundwater monitoring, the Board has had a hard time changing these requirements. Furthermore, requiring

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<sup>7</sup> The only program that exists currently for irrigated agriculture is solely controlling surface water discharges. Additionally, the Dept. of Pesticide Regulation has a groundwater program for pesticides, although currently only seven pesticides are regulated and permits are only required in key vulnerable areas.

<sup>8</sup> CAFOs generally were exempt from permit requirements, although these waivers sunset in California in 2000. Since then, the Board has failed to create any kind of regulatory program for CAFOs other than the General Order that was passed last year for existing milk cow dairies. That leaves many large industries, such as feedlots, which have much of the same impacts as dairies, without any permits at all. For example, as mentioned above. The Harris Ranch feedlot on I-5 has no water quality permit in place.

<sup>9</sup> The General Order for Existing Milk Cow Dairies only covers those facilities that were operating before Oct. 2005 and have not expanded more than 15% since that date. That leaves hundreds of facilities that are supposed to be covered by individual permits (WDRs). Thus far only a handful of these hundreds of dairy facilities in my area have been issued individual permits.

<sup>10</sup> See 2005 staff report on waste applied to land from food processing facilities, available at [http://www.waterboards.ca.gov/centralvalley/water\\_issues/waste\\_to\\_land/food\\_processing/staffrpt.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_land/food_processing/staffrpt.pdf).

<sup>11</sup> See Brown, Vence and Associates. 2003. Review of Animal Waste Management Regulations, Task 2 Report: Evaluate Title 27 Effectiveness to Protect Groundwater Quality.

clean-up is extremely difficult without monitoring data setting a baseline and monitoring changes down-gradient from a facility. So while facilities may be technically in compliance, often the requirements are not adequate to protect groundwater in the first place. Community drinking water supplies have become the canaries in the mine shaft that signal that there is a problem after widespread contamination has already occurred.

3. The Ant-Degradation Policy has not been implemented for groundwater.

In 1968 the State Board passed the Anti-degradation Policy, which said that high quality surface and groundwater should be protected from degradation.<sup>12</sup> Unfortunately, this policy has not been implemented in respect to groundwater. Regulations have been put in place that will allow for groundwater quality to worsen, do not require adequate groundwater monitoring, and because staff has included a phrase such as, “this permit does not allow groundwater degradation to occur,” it is deemed to be protective. Unfortunately, those words by themselves do nothing to protect groundwater, and as a result, our water quality has continued to worsen. The state board has failed to take up a petition regarding the implementation and requirements of this policy, particularly with regards to groundwater.<sup>13</sup>

4. There has been inadequate oversight of Regional Boards, and no penalty when Regional Boards fail to perform.

Despite numerous petitions, the State Board has failed to take up nearly all appeals. Parties only appeal when they can't live with an outcome, yet these pleas seem to fall on deaf ears. The State Board seems to be so concerned with keeping up good relationships with the regional boards, that it fails to exercise any real oversight authority. There should be some kind of penalty and accountability when regional boards are allowing contamination to worsen.

The state and regional boards should have more regular joint meetings, or have a state board member sit on each region to ensure accountability and oversight. We found that after one meeting in which there was a joint-hearing with the state and regional boards on an issue, there was a lot more follow through from the regional board to implement the direction expressed at that meeting.<sup>14</sup>

5. Basin Plans have not included a plan or timeline to meet water quality objectives, and have therefore been of limited use.

Many people believe that Basin Plans need to be updated, and that is the solution to our water quality problems. Ideally, Basin Plans should not only establish water quality objectives and beneficial uses, but also set an action-plan and timeline for meeting those

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<sup>12</sup> See State Board Resolution 68-16.

<sup>13</sup> For additional discussion of the failure to implement this policy, see the latter section on the General Order for Existing Milk Cow Dairies.

<sup>14</sup> There was a joint meeting with the State and Regional Board in Clovis in 2007 to discuss the Central Valley's Irrigated Lands Program.

objectives. However, at least in our area, the Basin Plan has not set any kind of meaningful action plan and timeline to meet the objectives<sup>15</sup>. Therefore, it has just been useful in setting water quality objectives, but no where has there been a plan to achieve those objectives, particularly for groundwater quality. If there is work to be done, it is the work of setting an action-plan and timeline to meet current objectives.

Unfortunately, I am concerned that any update will be used to allow water quality objectives to decrease to the levels that we have allowed them to deteriorate to today, and not resolve the problems that have allowed that quality to degrade in the first place. Historically, industry has a lot more resources to put into this kind of process, meaning that studies, data, and political pressure is generated by one side much more than others. Furthermore, in part because there are so few staff and so little funding, these efforts last many, many years with no clear result. It is important that any “update” process should be used to set an action plan and timeline for getting groundwater protections in place, rather than spending years reconsidering whether we have to meet the objectives set to protect beneficial uses, or postponing the implementation of important regulator programs on key industries.

**How has water quality regulation, or lack thereof, affected your region? Please explain your perspective on the Central Valley Regional Water Quality Control Board’s Waste Discharge Requirements General Order for Existing Milk Cow Dairies and other regulations germane to your work.**

As I discussed in detail in my response to the question above, there are numerous cases of how existing regulation has allowed groundwater to become contaminated (i.e. food processors disposing waste onto land), and many of our largest industries remain entirely unregulated with regard to groundwater quality (i.e. irrigated agriculture & feedlots and other non-dairy CAFOs). As a result, our region has the vast majority of drinking water violations in the state due to nitrate contamination of groundwater. Nitrate contamination is also the largest source of well closure in the state.

Unfortunately, even when there are new regulations put in place for an industry, the board does not have the political will to require full protections from major industries, such as was the case with the General Order for Existing Dairies. I am currently representing the Asociacion de Gente Unida por el Agua (AGUA), in their writ against the Central Valley Regional Water Quality Control Board regarding the issuance of the General Order for Existing Milk Cow Dairies. Because I am in the midst of litigation I may not be able to discuss this in-depth, however I have attached a copy of our petition to these comments.

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<sup>15</sup> The Tulare Lake Basin Plan’s action plan and timeline for addressing groundwater contamination consists of this sentence: “Investigations should be done to identify potential sources of these contaminants and practices should be developed to reduce these impacts.” IV-30. (17 August 1995), available at [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/).

As a summary, the Regional Board did not require the legally required standard (best practicable treatment or control) for existing facilities. For example, existing waste lagoons or retention ponds do not have to be lined, while newly constructed ones have to meet stricter requirements. Additionally, the permit does nothing to control discharges of solid waste (manure) if it is given or sold to a third party, a huge loophole for one of the largest sources of pollution from these facilities.

These inconsistencies between new and existing facilities can only be reconciled by the idea that the regional board did not want to impose too many costs on existing facilities. We all want to see our local economies continue to be strong, but that includes protecting drinking water sources, as well as industry. The Board has guidance on how to make this type of determination, that is, the determination to allow degradation to occur because it is in the best interest of the state to not impose higher costs on an industry. This type of analysis is exactly what is required by the Anti-Degradation Policy. Unfortunately, it has rarely if ever been implemented because Boards do not want to admit that they are sacrificing the quality of water for a beneficial use (such as drinking water), in order to cut costs for an industry. It is much easier to just put in a line saying that the permit does not allow for any degradation and hope that takes care of the issue, despite knowing that the actual requirements will allow for degradation to occur.

Specifically, while the Board may make a determination that it is okay to allow for degradation to occur from existing dairy facilities because it is in the best interests of the state, it should do a full analysis of the costs of compliance and also the costs of degradation, so that it can make this determination in a transparent and informed public process. Unfortunately, the costs of water quality degradation to public health and public drinking water systems is never quantified, while dischargers generate extremely high numbers to convince the regional board that the costs of regulations will drive them out of business. As a result, the Central Valley Regional Board continues to allow contamination to occur.

**How can the state balance the needs of business for economically-viable regulations with environmental needs?**

### 1. Anti-Degradation Analysis

I believe that the Anti-Degradation analysis that is required by under the State Board's policy (although it has not been implemented historically for groundwater) is a mechanism that could be used to effectively balance the needs of business and environmental groups. Anti-degradation analysis allows the Boards to identify the true costs of regulations, as well as the true costs of continued degradation. This process not only helps the boards make informed decisions, but will help identify the real costs of contamination and who is paying for it. That information can then be used to lobby for money to help off-set those costs. For example, legislators could be informed of the costs necessary to help an industry pay for new regulations or help the public pay for the cost of contamination. I feel strongly, however, that as a matter of public policy, we should



look at who is paying these costs, and as much as possible make activities internalize the true costs of operations by enacting polluter pays policies. That said, there may be cases where that cost is too high for an industry that has great public benefit, and we choose as a state or country to subsidize those activities. Currently, however, these numbers are not ever generated and therefore informed, transparent decisions cannot be made.

One of the hardest parts of this analysis, however, is quantifying the costs of degradation from weaker regulations. For example, the costs of building a new well or treatment or securing surface water and a treatment plant, or even more so, the public health impact of contaminated drinking water, may not be readily known. Unfortunately, these costs often require studies that do not exist and therefore may require significant resources and hold up the process.

## 2. Equity & Environmental Justice

Additionally, it is vital that in these analyses, we not lose sight of equity issues. More often than not it is low income communities and communities of color that are those most impacted by contamination. Any decision should also look at who is most impacted and alleviate areas that are already bearing a disproportionate burden.

## 3. Assistance and Incentives

Finally, the board should encourage the early adoption of pollution control technology, and also provide technical and monetary assistance to small businesses to allow them to comply with water quality requirements. I believe that if it were not for costs and hassles, all industries would like to prevent contamination, particularly for their own local community and workers. Often times individual businesses, especially small and immigrant business owners, may have a hard time understanding how to comply. We want to encourage the development of a sustainable agricultural economy, and that should not mean sacrificing public health, but it may mean developing pro-active programs to provide assistance and incentives. Of course, it is always important to have a stick on the other end pushing the bad actors into compliance as well.

**Does the state board have sufficient accountability measures and authority to ensure that California can protect and improve water quality through the actions of the nine regional boards? Should it have more power to direct the regional boards' actions? What is the appropriate relationship?**

The state board may have sufficient authority already, however it does not exercise that authority to ensure accountability. Appeals to the state board are almost always dismissed with virtually no explanation and left of the courts to decide. Currently, the state board is so concerned with maintaining a cooperative relationship, that it fails to exercise sufficient oversight.

Additionally, there are very few regular reports with performance measures required so that the state board and the regional boards can measure their performance. The state

board should establish a minimum threshold to see that boards are working in the right direction to achieve local water quality objectives. Additionally, regions should be judged on the extent that beneficial uses (which differ in each region) are impacted by water quality problems (i.e. drinking water systems have contaminated sources, beach closures, etc.)

Additionally, it should hold public hearings on those evaluation reports with each region to highlight areas for improvement and ensure that adequate resources are available. As discussed in my response to the first question above, holding joint public hearings with the state and regional boards does seem to make a difference in seeing that priorities are carried through at the regional level.

**How can the state and regional boards improve consistency, timeliness and transparency in performing duties, such as basin planning, adopting Total Maximum Daily Loads and permitting? How can the boards increase resources to improve performance?**

An improvement in consistency, timeliness and transparency requires far more resources being given to develop studies (EIRs, anti-degradation analysis, equity and environmental justice analysis, etc.), requiring consistent monitoring by dischargers (to evaluate effectiveness and compliance), and hiring an adequate level of staff. Additionally, stronger oversight measures by the State Board should help ensure that these duties are performed.

Staffing levels are far too low in the Central Valley Region (and likely other regions as well). There is not sufficient staff for basin planning, permitting, or enforcement. As a result, entire major industries remain unregulated. Often times the regional board tries to compensate for this by using consulting firms to generate reports or even do permitting. While this outsourcing may make sense in some cases, a staff should also be designated to oversee management of those contracts and be accountable for ensuring that they are following a timeframe and able to be responsive to stakeholder input. For example, the existing conditions report for the irrigated lands program was contracted out to a consultant and then sat in draft form for two years with no progress, despite repeated promises that it was being worked on. I was told that it will be different now because there is a staff overseeing the progress. Additionally, I was told that the contract for the EIR for the irrigated lands program had to be re-negotiated because they had to include groundwater after stakeholder input, which also seems to have delayed any perceivable process for two years.

To increase the resources available to the boards, the discharger fees could be increased, as could the collection of fines for violations. The state board should also look at equity between regions and may also want each region to have an incentive to collect fines and establish regulatory programs that will generate fees. As I understand the current financial systems between the State and Regional Boards, any money collected by a region will not necessarily go back to that region. That means that there is not much incentive to enroll dischargers in current or new programs, or collect fines from violators.

Do structural issues exist within regional boards that should be changed, such as the composition of the regions, number of board members and role and duties of the executive officer?

As discussed above, the Central Valley Region should be broken into smaller regions. Additionally, the current board composition does not seem to work well. Most of the representatives represent regulated (or what should be regulated) industries, rather than those interests most impacted by contamination. Additionally, the compensation for the regional board members means that it is basically a volunteer job and therefore 1) is only available to those that have another well-paid but flexible job or are independently wealthy, and 2) board members are unable to devote the time necessary to review the massive documentation given them, and as a result, rely almost entirely on staff and the executive officer. Because of inadequate compensation, there is not sufficient oversight by the Board, and board members are not adequately prepared to make informed decisions at meetings.

In general, the number of board members is not as important as the composition. And the composition is of limited importance when regional board members are inadequately paid to devote the time and energy necessary to make informed decisions. Regional board members should be paid for what is really a full-time job.

#### Conclusion

Thank you for the opportunity to provide my perspective. I look forward to answering questions at the hearing on April 24<sup>th</sup>, and would be happy to provide any additional information that would be useful.

Sincerely,



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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR COUNTY OF SACRAMENTO

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11  
12 ASOCIACION de GENTE UNIDA POR EL  
AGUA,  
13 A California unincorporated association,  
and  
14 ENVIRONMENTAL LAW FOUNDATION,  
15 a California non-profit organization,

16 Petitioners,

17 v.

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19 CENTRAL VALLEY REGIONAL WATER  
QUALITY CONTROL BOARD, a California  
20 State Agency,

21 Respondent.  
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**VERIFIED PETITION FOR WRIT OF  
MANDATE**

BASED UPON THE PORTER COLGNE  
WATER QUALITY CONTROL ACT (Cal.  
Water §§ 13000 *et seq.*)

1 Petitioners ASOCIACION DE GENTE UNIDA POR EL AGUA (“AGUA”) and  
2 ENVIRONMENTAL LAW FOUNDATION (“ELF”) bring this action on their behalf, on behalf  
3 of their members, on behalf of the general public and in the public interest and, on information  
4 and belief, hereby petition this court for a Writ of Mandate:  
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### 6 **I. INTRODUCTION**

7 1. Petitioners bring this petition for Writ of Mandate pursuant to California Code of Civil  
8 Procedure (“CCP”) §1094.5 to direct the Regional Water Quality Control Board, Central Valley  
9 Region (“Regional Board”) to re-issue Regional Board Order No. R5-2007-0035, Waste  
10 Discharge Requirements General Order for Existing Milk Cow Dairies (“Existing Dairies  
11 WDR”), in conformity with the requirements of the State Anti-Degradation Resolution 68-16  
12 (“State Anti-Degradation Policy”), Porter Cologne Water Quality Control Act Cal. Water Code  
13 §§ 13000 et. seq., and the Sacramento and San Joaquin River Basins and Tulare Lake Basin  
14 Water Quality Control Plans.  
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16 2. This action concerns the widespread contamination of groundwater in the Central  
17 Valley region, as a direct result of Respondent’s legally inadequate protections against pollution  
18 from dairy farms. Currently, 90% of Central Valley communities rely on groundwater as a  
19 source of drinking water. The administrative record for the Existing Dairies WDR contains  
20 voluminous evidence that Central Valley groundwater is already contaminated or “degraded” to a  
21 level that far exceeds the regulatory maximum. Nitrate contamination of groundwater is the  
22 primary cause of well closure and drinking water contamination in the State of California. The  
23 vast majority of all Safe Drinking Water Act violations due to nitrates occur in the Central Valley  
24 Region. In some areas, such as Tulare County, up to 20% of small public water systems and 40%  
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1 of private wells tested already violate Maximum Contaminant Levels (hereinafter, “MCLs”) for  
2 nitrates. These areas have been and continue to be designated as high quality water used for  
3 municipal and domestic supply in the applicable Basin Plans. As a result of nitrate  
4 contamination of groundwater used as a source of drinking water, public water systems and  
5 individual well owners will have to either secure alternative supplies, install expensive treatment  
6 technology, or abandon wells and hunt for new drinking water sources. These expenses will  
7 ultimately be borne by the individual water users through increased rates and assessments.  
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9 Additionally, residents in the region will likely be exposed to nitrate levels above the MCL, in  
10 violation of the Safe Drinking Water Act, or have to buy bottled water while new sources are  
11 secured. Nitrate levels above the MCL in drinking water is considered an acute contaminant by  
12 Federal and State Safe Drinking Water Acts because it can cause death in infants and pregnant  
13 women, in addition to other serious short terms and long term health impacts.  
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16 3. For the Existing Dairies WDR order to comply with State Resolution 68-16, it  
17 needed, at minimum, to require best treatment and control technology (BPTC) in protecting the  
18 State’s waters, and use of a proper baseline date in determining the amount of degradation. Yet  
19 in issuing the permit, Respondant included neither requirement. In doing so, Respondent  
20 committed a prejudicial abuse of discretion.  
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22 4. This petition requests the Court to set aside the Existing Dairies WDR, accompanied  
23 by an order to comply with the legal requirements for the State’s Anti-Degradation policy as set  
24 forth herein.  
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## 26 II. THE PARTIES

27 5. Petitioner ELF is a California 501(c)3 non-profit organization whose mission is to  
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1 improve environmental quality for those most at risk from toxic chemicals, by providing access  
2 to information and strategies, and by the enforcement of environmental, toxic and right-to-know  
3 laws. ELF is dedicated to the protection of human health and the environment and brings this  
4 action on its own behalf. As such, ELF has a direct interest in the proper implementation of the  
5 State Anti-Degradation Policy. Adoption of the Existing Dairies WDR Order with its flawed and  
6 incomplete implementation of the State Anti-Degradation Policy will degrade drinking water  
7 supplies throughout the Central Valley, thereby harming ELF. ELF's address is 1736 Franklin  
8 St., Oakland, CA 94612.  
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11 6. Petitioner AGUA is an unincorporated association with members residing in  
12 low-income Central Valley communities, as well as community-based and non-profit  
13 organizations working in low-income Central Valley communities. AGUA's mailing address is  
14 313 N. West St. Visalia, CA 93291. The mission of AGUA is to ensure that all Central Valley  
15 residents have access to safe, clean and affordable water. Petitioners' health, interests and  
16 finances are directly harmed the Regional Board's Order Order No. R5-2007-0035. Additionally,  
17 AGUA has a beneficial interest in this Petition for Writ of Mandate because it seeks to enforce a  
18 public duty.  
19  
20

21 7. Respondent Central Valley Regional Water Quality Control Board ("Regional Board")  
22 is a California agency created under the laws and regulations of the State of California and is  
23 qualified to do and is engaged in the regulation of water within the Central Valley Region.  
24

25 8. Plaintiff is informed and believes and thereon alleges that the Central Valley Regional  
26 Water Quality Control Board controls the operation, policies, and activities of the water pollution  
27 permitting process.  
28

1 **III. REGULATORY AND PROCEDURAL BACKGROUND**

2 A. Petition Statutory and Regulatory Background

3 9. California Water Code, Division 7, § 13000 et. al. is also known by its title,  
4 “Porter-Cologne Water Quality Control Act” (“the Act”). Cal. Wat. Code § 13020. The Act  
5 protects all waters of the State of California, including groundwater.  
6

7 10. Section 13330 of The Act provides that “any party aggrieved by a final decision or  
8 order of a regional board for which the state board denies review may obtain review of the  
9 decision or order of the regional board in the superior court by filing in the court a petition for  
10 writ of mandate not later than 30 days from the date on which the state board denies review.”  
11

12 11. The Central Valley Regional Water Quality Control Board (“Regional Board”)  
13 Existing Dairies WDR Order R5-2007-0035 (“Existing Dairies WDR”) was an “order of a  
14 regional board” as the term is used in Section 13330 of the Act.  
15

16 12. Petitioners are both “aggrieved parties” as the term is used in Section 13330 of the  
17 Act. Petitioners actively participated in the issuance of the Regional Board’s Existing Dairies  
18 WDR, including the timely submission of comments to the Regional Board and oral testimony  
19 before the Regional Board at public hearings.  
20

21 13. Petitioners submitted timely comments to the Regional Board on April 23, 2007,  
22 explaining the legal deficiencies with implementing the State Anti-Degradation Policy in its  
23 proposed Existing Dairies WDR order that form the basis for this Application. (There were also  
24 previous written comments submitted - should we include those?)  
25

26 14. When Petitioners’ concerns regarding the Existing Dairies WDR were left  
27 unaddressed by the Regional Board in its approval of the order, Petitioners timely petitioned the  
28



1 State Water Resources Control Board (“State Board”) for review of the Existing Dairies WDR  
2 pursuant to Section 13320 of the Act.

3 15. Petitioners’ petition for review of the Existing Dairies WDR by the State Board was  
4 denied in a written notice to Petitioners on January 16, 2007. A true and correct copy of the  
5 denial is attached as Exhibit “I.”  
6

7 16. This writ of mandate is timely filed within 30 days of the State Board’s denial of  
8 Petitioners’ Petition for Review, in accordance with Cal. Water Code § 13330(a).  
9

10 17. Section 13330(d) of the Act provides that, “Except as otherwise provided herein,  
11 Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are  
12 filed pursuant to this section.”  
13

14 18. Section 13330(d) further provides that “for the purposes of subdivision (c) of Section  
15 1094.5 of the Code of Civil Procedure, the court shall exercise its independent judgement of the  
16 evidence in any case involving [...] a decision or order of a regional board for which the state  
17 board denies review under section 13320.”  
18

19 19. Existing Dairies WDR Order R5-2007-0035 was a decision or order of a regional  
20 board as the term is used in Section 13330(d) of the Act, the review of which was denied by the  
21 state board on January 16, 2007.  
22

23 20. State Resolution 68-16 (“State Anti-Degradation Policy”) is an enforceable water  
24 quality standard in the State of California and is included as a water quality requirement in the  
25 Sacramento and San Joaquin River Basins and Tulare Lake Basin Water Quality Control Plans  
26 (“Basin Plans”).  
27

28 21. The State Anti-Degradation Policy provides that, “Any activity which produces or

1 may produce a waste or increased volume or concentration of waste and which discharges or  
2 proposes to discharge to existing high quality waters will be required to meet waste discharge  
3 requirements which will result in the best practicable treatment or control of the discharge  
4 necessary to assure that (a) pollution or nuisance will not occur and (b) the highest water quality  
5 consistent with maximum benefit to the people of the State will be maintained.”  
6

7         22. By violating the State Anti-Degradation Policy, Respondent has committed an abuse  
8 of discretion in issuing the Existing Dairies WDR. By the relief set forth in CCP §1094.5,  
9 Petitioners request the Order be set aside by the court and re-issued in accordance with the  
10 correct practices set forth below.  
11

#### 12 B. Procedural Background to Existing Dairies WDR Order

13         23. Prior to 2003, no dairy in the region was subject to waste discharge requirements  
14 under the Regional Board’s Resolution No. 82-036. That waiver expired Jan 1, 2003.  
15

16         24. On December 6, 2002, the Regional Board adopted Resolution R5-2002-0205, which  
17 required all dairies to submit Reports of Waste Discharge, and set three options for regulation  
18 depending on the type of discharge of waste, including conditional waivers, individual Waste  
19 Discharge Requirements (WDRs) and National Pollution Discharge Elimination Systems  
20 (NPDES) permits. The Regional Board then rescinded that order and told all facilities not to do  
21 anything until notified.  
22

23         25. The Regional Board issued a letter to each dairy in August 5, 2005 requiring each  
24 facility to submit Reports of Waste Discharge (RWD). A handful of the region’s dairies were  
25 regulated under a General WDR for Milk Cow Daires (Order No. 96-270) or individual WDRs.  
26 However, nearly all (95%) of the 1600 existing dairies that were ultimately subject to this Order  
27  
28

1 have never been subject to any waste discharge requirements.

2 26. On May 3, 2007, the Regional Board issued the Existing Dairies WDR order creating  
3 a general WDR for all existing dairy CAFO facilities operating as of Oct. 17, 2005.

4  
5 27. Petitioners have exhausted administrative remedies and have have no plain, speedy,  
6 or adequate remedy in the ordinary course of law; the only relief that can be obtained by  
7 petitioner is through the granting of this writ of mandate.

#### 8 **IV. JURISDICTION AND VENUE**

9  
10 28. This Court has jurisdiction over Respondent because it is a California agency  
11 permitting land in the Central Valley, with its headquarters in Rancho Cordova, California.  
12 Venue is proper in this Court because the cause of actions complained of arise in Sacramento  
13 County and a number of the real properties affected by the Existing Dairies WDR are located in  
14 Sacramento County. CCP §§ 393 and 395.5.

15  
16 29. Under California Law, a party which has participated in the regulatory process may  
17 subsequently challenge the final agency action in court.

18  
19 30. ELF and AGUA are both parties which actively participated in the review of the  
20 Existing Dairies WDR Order.

21 31. This petition for writ of mandate is timely filed within 30 days of the January 16,  
22 2008 Denial of Review of the Existing Dairies WDR by the State Board.

#### 23 **V. STANDARD OF REVIEW**

24  
25 32. Petitioners seek a writ of mandate seeking review of the Regional Board's Existing  
26 Dairies WDR pursuant to Cal. Water Code § 13330(b).

27 33. California Code of Civil Procedure §1094.5 provides that "the inquiry in such a case  
28

1 shall extend to the questions whether the respondent has proceeded without, or in excess of,  
2 jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of  
3 discretion. Abuse of discretion is established if the respondent has not proceeded in the manner  
4 required by law, the order or decision is not supported by the findings, or the findings are not  
5 supported by the evidence.” This establishes Abuse of Discretion as the appropriate standard of  
6 review.  
7

## 8 **VI. FIRST CAUSE OF ACTION**

9  
10 (Violations of State Anti-Degradation Policy for failure to use best practicable control technology  
11 (“BPCT”))

12 34. Petitioner incorporates by reference the allegations in the paragraphs set forth above.

13 35. State Anti-Degradation Policy provides that, “Any activity which produces or may  
14 produce a waste or increased volume or concentration of waste and which discharges or proposes  
15 to discharge to existing high quality waters will be required to meet waste discharge requirements  
16 which will result in the best practicable treatment or control of the discharge necessary to assure  
17 that (a) pollution or nuisance will not occur and (b) the highest water quality consistent with  
18 maximum benefit to the people of the State will be maintained.”  
19

20  
21 36. The Regional Board prejudicially abused its discretion by failing to proceed in the  
22 manner required by law when it adopted Order No. R5-2007-0035 because it failed to require  
23 Best Practical Treatment or Control (hereinafter “BPTC”), as required under the  
24 Anti-degradation Policy Porter Cologne and applicable Basin Plans. See State Board Resolution  
25 68-16; California Water Code §§ 13000, 13263, 13240, 13241. BPTC has been interpreted to  
26 mean the “level of treatment or control ... technically achievable using “best efforts.” See  
27  
28

1 Frances L. McChesney, “Fact Sheet; State Water Resources Control Board Resolution No.  
2 68-16.” (1994) p. 7.

3 37. Additionally, the Regional Board’s findings that this Existing Dairies WDR will  
4 result in BPTC and that groundwater degradation will not occur as a result of this permit are not  
5 supported by the evidence present in the administrative record. This finding of no degradation  
6 forms the basis of Respondent’s abuse of discretion in failing to comply with Resolution 68-16.  
7

8 38. The Regional Board failed to require the BPTC for existing waste retention ponds,  
9 corrals, milk parlors, off-site disposal for solid manure, monitoring and reporting, and closure  
10 and clean-up requirements as established by numerous studies before the Regional Board in the  
11 record.  
12

### 13 Retention Ponds

14 49. The Existing Dairies WDR fails to require BPTC by continuing to allow existing  
15 retention ponds to only meet less stringent outdated requirements (as set forth in Title 27 and  
16 Cal. Code Regs. Tit. 2, § 20375), despite numerous studies and findings by the Regional Board  
17 that these standards are insufficient to protect groundwater. The Existing Dairies  
18 WDR establishes stricter requirements for ponds than those in Title 27 because it finds that  
19 stricter standards must be imposed to assure protection of groundwater and meet state  
20 anti-degradation requirements— but does so only for new or reconstructed ponds.  
21  
22

23 40. In some cases, the Existing Dairies WDR actually requires less strict requirements  
24 than even Title 27 standards. Below-grade wastewater holding ponds must only maintain a one  
25 (1) foot freeboard following a storm event, rather than the standard two (2) feet. See Cal. Code  
26 Regs. Tit. 2, Sec. 20375 (Title 27 requires a minimum two feet freeboard for all surface  
27  
28

1 impoundments unless certain conditions are met.).

2           41. The Existing Dairies WDR further violates the Anti-degradation Policy by not  
3 requiring BPTC before allowing degradation to occur. Instead, the Existing Dairies WDR only  
4 requires an engineering evaluation and changes to be made to existing ponds after groundwater  
5 monitoring is available and can demonstrate that the existing pond has adversely impacted  
6 groundwater quality. However, the Existing Dairies WDR does not require that dairies actually  
7 create a monitoring program to determine whether a pond has adversely impacted groundwater  
8 quality, unless the Executive Officer chooses to impose additional monitoring requirements on  
9 an individual dairy. Because monitoring is optional, there is no means contained in the WDR  
10 order to determine if an existing retention pond will degrade groundwater—this despite ample  
11 evidence in the administrative record that groundwater contamination is ongoing, increasing and  
12 expanding. Even if a monitoring requirement was included, given the years it takes for waste to  
13 infiltrate groundwater, contamination from existing ponds may not be detected in monitoring  
14 wells for up to fifteen (15) years after application, according to groundwater expert Thomas  
15 Harter of the University of California, Davis. Therefore, the Existing Dairies WDR creates  
16 phantom protections in a vicious cycle where there is no assurance that existing dairies will ever  
17 be required to implement BPTC for existing ponds.  
18  
19  
20  
21

22           42. The Existing Dairies WDR fails to provide evidence to support a non-cursory finding  
23 that groundwater degradation will not occur as a result of the Regional Board's failure to require  
24 BPTC for existing retention ponds. The Existing Dairies WDR contains no explanation of the  
25 Regional Board's reasoning in making the findings set forth in the General Order's Findings or  
26 Information Sheet.  
27  
28

1 Corrals & Milk Parlors

2 43. The Existing Dairies WDR fails to impose minimum BPTC for corrals and milk  
3 parlors, as set forth in studies before the Regional Board. Virtually none of the BPTCs set forth  
4 by studies in the record are required in the Order, despite substantial evidence before the  
5 Regional Board justifying the need for such criteria to protect groundwater.  
6

7 44. The Existing Dairies WDR erroneously applied a performance standard of “no  
8 exceedances of water quality objectives” to develop insufficient requirements for corrals and  
9 milk parlors. The minimum performance standard used to determine the BPTC should be “no  
10 change in groundwater quality,” particularly for waters with contaminant levels that are  
11 approaching or already exceeding water quality objectives. Any less protective standard,  
12 including the “no exceedances of water quality objectives” standard used throughout this Order,  
13 would allow for some degradation, and, therefore, violates the State Anti-Degradation Policy,  
14 Basin Plans, and even meet the stated groundwater limitations of the Order, particularly for those  
15 waters with contaminant levels approaching or already exceeding water quality objectives.  
16  
17

18 45. The Regional Board failed to support its findings that the requirements in the  
19 Existing Dairies WDR for corrals and milk parlors are the BPTC, and failed to support its finding  
20 that groundwater degradation will not occur. In its response to comments, the Regional Board  
21 stated that it only incorporated “those recommendations that seemed most important for the  
22 protection of water quality.” That fictional standard does not satisfy BPTC as mandated by the  
23 Anti-degradation Policy, and it does not support the findings of the Order. .  
24  
25

26 Off-Site Disposal

27 46. Numerous studies before the Board in the record show solid manure application to  
28

1 land as a significant source of groundwater contamination. Solid manure application to land was  
2 found to be a primary cause of groundwater degradation impairing beneficial uses in the Chino  
3 Basin.

4  
5 47. The General Existing Dairies WDR failed to impose best management practices and  
6 BPTC for solid manure by failing to impose any requirements on manure discharged to third  
7 parties. The Existing Dairies WDR does not require a nutrient management plan or even a  
8 manifest for third parties receiving solid manure to ensure that discharges will not cause a  
9 nuisance or exceed water quality objectives. These discharges to third parties are not regulated to  
10 protect groundwater under any other regulatory program. By permitting solid manure waste to be  
11 discharged to third parties without any requirements in this Existing Dairies WDR to ensure  
12 application at agronomic rates, the Regional Board is failing to prevent groundwater degradation  
13 from one of the major sources of water contamination. This Order's total lack of requirements  
14 contrasts sharply with the Santa Ana Regional Water Quality Control Board's requirements for  
15 dairies, which prohibit any application of manure to land in that region, and requires that any  
16 discharged manure to land outside of the region implement a plan acceptable to the Executive  
17 Officer to offset the effects of that application to the underlying groundwater.  
18  
19  
20

21 48. These discharges to third parties are not regulated to protect groundwater under any  
22 other regulatory program. By permitting solid manure waste to be discharged to third parties  
23 without any requirements in this Existing Dairies WDR to ensure application at agronomic rates,  
24 the Regional Board is failing to prevent groundwater degradation from major sources of  
25 contamination by these facilities.  
26

27 49. The Regional Board failed to support findings in the record that the requirements in  
28



1 the Existing Dairies WDRfor discharge of manure to third parties constitute BPTC, as well as  
2 failed to support findings in the record that the Existing Dairies WDRwill not allow groundwater  
3 degradation.  
4

5 Groundwater Monitoring and Reporting Requirements

6 50. Studies in the record before the Regional Board show that antibiotics and hormones  
7 used on dairy cows are present in the wastewater stream and that pathogens from dairy  
8 discharges can contaminate surface and groundwater supplies. The Existing Dairies  
9 WDRrequires only groundwater monitoring of existing supply wells, unless additional  
10 groundwater monitoring is specifically required by the Executive Officer at her discretion. Such a  
11 monitoring program cannot determine the risk a given dairy presents to groundwater. Existing  
12 domestic and irrigation supply wells usually are sited in areas least likely to be contaminated, i.e.  
13 up gradient of the facility or otherwise protected from contamination, and often at depths below  
14 the reach of recent groundwater pollution. Therefore, such testing likely will show only legacy  
15 pollution or pollution from a variety of sources, including up stream dischargers. The monitoring  
16 requirements in the Order, while important to establish current levels of groundwater  
17 contamination, are insufficient to ensure that the requirements of this Existing Dairies  
18 WDRcomply with the State Anti-degradation Policy, meet the Groundwater Limitations in the  
19 Order, or support its findings that groundwater contamination will not occur.  
20  
21  
22

23 51. The Monitoring and Reporting requirements of the Existing Dairies WDRdo not  
24 constitute BPTC and are insufficient to protect groundwater from degradation. The Existing  
25 Dairies WDRdoes not require all facilities to install groundwater monitoring systems to  
26 characterize groundwater quality up gradient and down gradient from contaminating areas, nor  
27  
28

1 does it require vadose zone monitoring to detect contamination before it has become widespread.  
2 Without adequate groundwater monitoring requirements at every facility to detect contamination  
3 before widespread degradation occurs, the general WDR is improperly permitting discharges that  
4 degrade the waters of this state.  
5

6 52. The Existing Dairies WDR requires only groundwater monitoring of existing supply  
7 wells, unless additional groundwater monitoring is specifically required by the Executive Officer  
8 at her discretion. Such a monitoring program cannot determine the risk a given dairy presents to  
9 groundwater. Existing domestic and irrigation supply wells usually are sited in areas least likely  
10 to be contaminated, i.e. up gradient of the facility or otherwise protected from contamination, and  
11 often at depths below the reach of recent groundwater pollution. Therefore, such testing likely  
12 will show only legacy pollution or pollution from a variety of sources, including up stream  
13 dischargers. The monitoring requirements in the Order, while important to establish current  
14 levels of groundwater contamination, are insufficient to ensure that the requirements of this  
15 Existing Dairies WDR comply with the Anti-degradation Policy, meet the Groundwater  
16 Limitations in the Order, or support its findings that groundwater contamination will not occur.  
17  
18  
19

20 53. Water sampling requirements in the Existing Dairies WDR for surface and  
21 groundwater discharges are inadequate to protect human health and beneficial uses because they  
22 fail to require testing and reporting for all chemicals that are discharged into the waters of the  
23 state by existing dairy facilities. The Existing Dairies WDR fail to require reporting of antibiotics  
24 and hormone application on the facility, despite studies in the record before the Regional Board  
25 shows that antibiotics and hormones used on dairy cows are present in the wastewater stream.  
26 Additionally, the Existing Dairies WDR fails to require sampling of hormones and antibiotics  
27  
28

1 among the constituents for which groundwater and surface water are tested, when those  
2 constituents are used at a facility.

3 54. The Existing Dairies WDR further fails to require testing for pathogens among the  
4 groundwater and surface water sampling requirements, despite studies in the administrative  
5 record showing that pathogens from dairy discharges can contaminate surface and groundwater  
6 supplies and ultimately cause human exposure.  
7

8 Closure and Clean Up  
9

10 55. The Existing Dairies WDR fails to require BPTC to ensure enforcement and  
11 compliance with clean up of groundwater contamination. The Existing Dairies WDR requires no  
12 bonding, insurance, or other financial guarantee that a facility will be able to pay for closure and  
13 clean up, nor does it state that closure requirements will require at least the minimum criteria and  
14 BPTC to meet the performance goal required by the Anti-degradation Policy -- no change in  
15 groundwater quality.  
16

17 56. Studies in the record before the Regional Board show that the greatest risk of  
18 groundwater contamination from retention ponds and corrals may occur after a facility is no  
19 longer in use.  
20

21 57. Due to the foregoing failures to implement BPCT in the Existing Dairies WDR, as  
22 required by the State Anti-Degradation Policy, Respondents have committed an abuse of  
23 discretion in issuing the Order.  
24

25 **VII. SECOND CAUSE OF ACTION**

26 (Violations of State Anti-Degradation Policy for failure to set an appropriate baseline  
27 measurement.)  
28

1 58. Petitioners incorporate the foregoing paragraphs as if set forth herein.

2 59. Baseline water quality has been interpreted to mean “the best quality of the receiving  
3 water that has existed since 1968,... unless subsequent lowering was due to regulatory action  
4 consistent with State and federal antidegradation policies.” APU 90-004. Additionally, the  
5 California Environmental Protection Agency, and the Regional Water Quality Control Board  
6 Central Valley Region’s, A Compilation of Water Quality Goals (August 2003), defines  
7 background levels to be maintained as “the concentration of substances in natural waters that are  
8 unaffected by waste management practices or contamination incidents.” p. 6. Under either  
9 interpretation, this general WDR fails to protect baseline water quality.  
10  
11

12 60. The Regional Board inserted into the Existing Dairies WDRa finding as a late  
13 revision that established that the benchmark for evaluating whether or not the Existing Dairies  
14 WDR will have impacts on the environment will be the environmental conditions as they existed  
15 on October 17, 2005. (Order No. R5-2007-0035, Finding 19.)  
16

17 61. While this finding may have been directed toward establishing the Order’s  
18 compliance with CEQA, the finding violates the State Anti-Degradation Policy, which requires  
19 that the baseline for determining degradation be the best water quality since 1968. (See APU  
20 90-004, p. 4.)  
21

22 62. Present water quality cannot serve as the legal baseline for anti-degradation analyses,  
23 even if that quality was the result of previous regulatory action found to be consistent with the  
24 State Anti-Degradation Policy.  
25

26 63. Ongoing degradation in the present case is occurring as a result of existing dairies’  
27 waste disposal practices, and setting a recent baseline rewards or excuses past degradation, and as  
28



EXHIBIT LIST

1  
2 A. Waste Discharge Requirements Order No. R5-2007-0035.

3 B. Petition of Environmental Law Foundation to State Water Resources Control Board,  
4  
5 requesting review of Order R5-2007-0035, dated June 1, 2007.

6 C. Comments to Regional Board from ELF regarding Order R5-2007-0035, dated April  
7 23, 2007

8 D. Petition of AGUA to State Water Resources Control Board, requesting review of  
9  
10 Order R5-2007-0035, dated May 30, 2007.

11 E. Comments by Community Water Center on behalf of AGUA regarding Order  
12 R5-2007-0035, Dated April 21, 2007.

13 F. Comments by Community Water Center on behalf of AGUA regarding Order  
14  
15 R5-2007-0035, dated January 16, 2007.

16 G. Powerpoint presentation from Community Water Center on behalf of AGUA, to  
17  
18 Central Valley Regional Water Quality Control Board, dated December, 2006

19 H. Powerpoint presentation from Community Water Center on behalf of AGUA, to  
20  
21 Central Valley Regional Water Quality Control Board, dated May, 2007.

22 I. Written denial by State Water Resources Control Board, denying Petitioners' Petition  
23  
24 for Review of Order R5-2007-0035, dated January 16, 2008.

25 J. Copy of letter sent to Attorney General Edmund G. Brown Jr., accompanied by a copy  
26  
27 of the above petition, pursuant to CCP § 388, dated February 15, 2008.

28 K. Request to Pamela Creedon, Executive Director, to prepare the administrative record  
for this petition.

1 **VERIFICATION**

2 Environmental Law Foundation and Asociacion de Gente Unica Por el Agua. v. Central Valley  
3 Regional Water Quality Control Board,  
4 Sacramento Country Superior Court, Case No. [Unassigned]

5  
6 1. I am an attorney at law duly admitted and licensed to practice before all courts of this  
7 State. I have my professional office at 1736 Franklin St., 9th Floor, Oakland, CA 94612.

8  
9 2. I am the attorney of record for Environmental Law Foundation (“ELF”), and on behalf  
10 of Asociacion de Gente Unica Por el Agua. (“AGUA”), the Petitioners in this action. My  
11 California State Bar number is 237485.

12 3. Petitioner Environmental Law Foundation is a 501(c)(3) non-profit corporation  
13 residing in Oakland, California.

14  
15 4. Petitioner Asociacion de Gente Unica Por el Agua. (AGUA) an unincorporated  
16 association with members residing in Tulare County County and throughout the Central Valley  
17 Region.

18  
19 5. I have read the foregoing Verified Petition for Writ of Mandate and know the contents  
20 thereof; the factual allegations therein are true of my own knowledge, except as to those matter  
21 which are therein stated upon my information or belief, and as to those matters I believe them to  
22 be true.

23  
24 I declare under penalty of perjury, under the laws of the State of California, that the  
25 foregoing is true and correct.

26 Executed on the 15th day of February, 2008 at Oakland, California.