INTRODUCTION

Petitioner Monterey County Water Resources Agency ("Agency"), in accordance with section 13320 of the Water Code, hereby petitions the State Water Resources Control Board ("State Water Board") to review the April 18, 2012 "Request for Information – Report of Waste Discharge" ("Request") issued by the Regional Water Quality Control Board, Central Coast Region's ("Regional Water Board") Executive Officer, attached hereto as Exhibit A. The issues and a summary of the bases for the Petition follow. At such time as the full administrative record is
available and any other material has been submitted, the Agency reserves the right to file a more
detailed memorandum in support of the Petition and/or in reply to the Regional Board’s response.¹

1. **NAME, ADDRESS, TELEPHONE, AND EMAIL FOR PETITIONER:**

   David E. Chardavoyne  
   Interim General Manager  
   Monterey County Water Resources Agency  
   P.O. Box 930  
   Salinas, California 93902  
   Telephone: (831) 755-8906  
   Facsimile: (831) 424-1098  
   Email: chardavoyned@co.monterey.ca.us

   In addition, all materials in connection with this Petition for Review should also be provided
to the Agency’s counsel at the following addresses:

   Irven L. Grant  
   Deputy County Counsel  
   County of Monterey  
   168 W. Alisal Street, Third Floor  
   Salinas, California 93901-2653  
   Telephone: (831) 755-5045  
   Facsimile: (831) 755-5283  
   Email: granti@co.monterey.ca.us

   Nicole E. Granquist  
   Downey Brand LLP  
   621 Capitol Mall, 18th Floor  
   Sacramento, California 95814  
   Telephone: (916) 444-1000  
   Facsimile: (916) 444-2100  
   Email: ngranquist@downeybrand.com

2. **THE SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE
   BOARD IS REQUESTED TO REVIEW:**

   The Agency seeks review of the April 18, 2012 Request issued by the Regional Water
   Board’s Executive Officer.

¹The State Board’s regulations require submission of a statement of points and authorities in support of a petition (23
C.C.R. §2050(a)(7)), and this document is intended to serve as a preliminary memorandum. However, it is impossible
to prepare a thorough statement or a memorandum that is entirely useful to the reviewer in the absence of the complete
administrative record, which is not yet available.
3. THE DATE ON WHICH THE REGIONAL BOARD ACTED:

The Regional Water Board's Executive Officer sent the Request to the Agency on April 18, 2012.

4. A STATEMENT OF THE REASONS THE ACTION WAS INAPPROPRIATE OR IMPROPER:

In the Request, the Executive Officer asks for general information regarding periodic pumping that may be conducted by the Agency for flood control purposes. The Executive Officer then demands that the information responsive to the Request be submitted in the form of a Report of Waste Discharge ("ROWD") and U.S. Environmental Protection Agency ("USEPA") Forms 1 and 2-A (e.g., applications for Waste Discharge Requirements ("WDRs")/federal Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit), though the Executive Officer concurrently asserts throughout the Request that no conclusion has yet been made whether any permit is actually necessary for the Agency's activities. Water Code sections 13260 and 13376 are cited as the authorization for the Request, and civil liability under Water Code sections 13261 and 13385 are recited as applicable if the Agency does not respond to the Request by May 31, 2012.

The Executive Officer's actions have placed the Agency in the untenable circumstance of being ordered to file an application for a permit (with attendant fees?) before any determination has actually been made as to whether a permit is required for any Agency-related water conveyance activities. Further, the Agency faces potentially harsh civil penalties if the Agency does not submit the demanded applications. The Agency does not believe any of its water conveyance activities require WDRs or an NPDES permit.

The Executive Officer's Request is not reasonable as required by Water Code section 13000, is contrary to Water Code sections 13260 and 13376, and is otherwise unsupported by findings or evidence in the administrative record, all of which constitute an abuse of discretion. For the reasons stated herein and in Section 7 below, the Agency requests the State Water Resources Control Board ("State Water Board") to deem the Executive Officer's April 18, 2012 Request inappropriate and improper in accordance with Water Code section 13320(c) and to set aside the Request in accordance with 23 C.C.R. §2052(a)(2)(B).
5. **THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:**  
The Executive Officer’s Request requires the Agency to submit applications for state and federal discharge permits (WDR and NPDES permit) no later than May 31, 2012 for activities for which no determination has yet been made as to whether such permits are required. More egregiously, permit applications are required as the mechanism by which the Agency must furnish simple factual information responsive to the Request. Not only is the Request procedurally improper (information regarding factual activities of the Agency must be submitted to the Regional Water Board in the form of permit applications), the Request is substantively deficient (requiring permit applications before any determination is made that such permits are necessary). Further, it is unclear whether the Executive Officer expects the Agency to pay the fee associated with submission of a ROWD and Forms 1-2A required by Water Code §13260(d) – (f), collected to fund permit preparation activities, but misdirected at a response to a request for information.

If the Agency does not comply, the Request recites that civil liability under Water Code sections 13261 and 13385 may be imposed in excess of $10,000 per day. The Agency does not believe its activities require WDRs or an NPDES permit, and the Agency should be provided the opportunity to discuss the matter with Regional Water Board staff without being under the threat of enforcement should the Agency choose not to submit the demanded permit applications.

6. **THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS:**  
The Agency seeks an Order by the State Water Board that determines the Executive Officer’s April 18, 2012 Request was inappropriate and improper in accordance with Water Code section 13320(c) and that sets aside the Request in accordance with 23 C.C.R. §2052(a)(2)(B).

7. **A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION:**  
The Agency incorporates by reference the information presented elsewhere in this Petition. The Agency also reserves the right to supplement this statement of points and authorities upon receipt and review of the administrative record.
A. Monterey County Water Resources Agency

The Agency is a special act flood control and water agency formed by the legislature in 1990 to replace the Monterey County Flood Control and Water Conservation District. (Water Code App. § 52-8; Stats. 1990, c. 1159 (S.B. 2580), § 4.) The Agency maintains flood control channels that accept and convey water, including agricultural run-off already regulated by the Regional Water Board pursuant to Order No. R3-2012-0011, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, as well as previous conditional waivers adopted by the Regional Water Board ("Ag Waiver"). The Agency simply maintains the Blanco Drain and the Reclamation Ditch for drainage and flood control purposes.

B. Pending Lawsuit Against the Agency by Monterey Coastkeeper

On October 21, 2010, Monterey Coastkeeper, a project of The Otter Project, filed a Petition for Writ of Mandate and Complaint for Declaratory Judgment ("Coastkeeper Complaint") against the Agency in Monterey County Superior Court alleging, among other things, that the Agency is required to secure WDRs for its maintenance of the Blanco Drain and Reclamation Ditch, due primarily to the presence of already regulated agricultural return flows in those channels that Monterey Coastkeeper believes is of insufficient quality. Coastkeeper essentially argues that MCWRA must obtain a permit from the Regional Water Board to "re-regulate" these agricultural discharges after they reach the flood control channels, solely on the theory that the mere continuation of flow amongst and between Blanco Drain and/or the Reclamation Ditch and all downstream waters (e.g., the Salinas River) is a separate and distinct discharge of waste subject to repeated regulation. Not surprisingly, the Agency disagrees. A copy of Monterey Coastkeeper’s Petition for Writ of Mandate and Complaint is attached hereto as Exhibit B. Coastkeeper and the Agency are actively engaged in litigation on this topic, with trial scheduled for October 22, 2012.

During deposition testimony by Steve Shimek, the Executive Director of the Otter Project, on May 11, 2012, Mr. Shimek testified that recently, and almost two years after filing the Coastkeeper Complaint, he telephonically contacted the Executive Officer of the
Regional Water Board to inquire as to whether the Agency possessed permits for its activities, including periodic pumping within the Blanco Drain and Reclamation Ditch. Mr. Shimek testified that Mr. Briggs told him that he “would look into it, and get back to him.” Shortly thereafter, the Agency received the Request at issue in this Petition.

C. **The Regional Water Board’s Request**

On April 18, 2012, the Executive Officer of the Regional Water Board sent the Agency the Request. Of relevance, the Requests states as follows:

“Central Coast Regional Water Quality Control Board (Central Coast Water Board) staff understands that the Monterey County Water Resources Agency (MCWRA) periodically pumps surface water from flood control channels, such as the Blanco Drain and the Reclamation Ditch, directly into other waterbodies (e.g., the Salinas River). Both the Federal Water Pollution Control Act Section 402 and California Water Code section 13376 require any person or entity that discharges pollutants or proposes to discharge pollutants to navigable waters of the United States to obtain a National Pollutant Discharge Elimination System (NPDES) permit. In addition, Section 13260(a) of the Porter Cologne Water Quality Control Act states: Each of the following persons shall file with the appropriate regional board a report of waste discharge, containing the information that may be required by the regional board: (I) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system. The Central Coast Water Board is responsible for issuing waste discharge requirements, including NPDES permits, in Monterey County.”

(See Request at page 1 (italics in original, bold emphasis added).) The Request further states:

“In order to evaluate if these types of discharges contain pollutant and if waste discharge requirements or NPDES permits are required, the Central Coast Water Board requires you to submit the following information by May 31, 2012:

1. How many pumping locations exist and where are they? Please provide a map showing the locations.
2. Why is the water discharged?
3. When is the water discharged?
4. How much water is discharged?
5. Does your agency monitor the volume and chemistry of the discharges, or the effects of the discharges on receiving waters?
6. What is the quality of the discharged water with respect to potential pollutants?
7. What is the quality of the receiving waters with respect to potential pollutants?
8. Which branch of MCWRA oversees these activities?”
The information should be transmitted on the Report of Waste Discharge forms that can be found at... [ROWD Form 200, USEPA Forms 1 and 2-A].” (Id. at pages 1-2) (emphasis added.)

Finally, the Request concludes,

“Based on the information you provide, **Central Coast Water Board staff will evaluate if pollutants are being discharged into waters of the United States or of the state and if you will be required to obtain a NPDES permit or other another type of permit from our agency. If we determine that a permit is needed, Water Board staff will contact you to discuss our permitting process.”

(Id. at page 2) (emphasis added.) The plain language of the Request makes clear that no determination has been, or could be, made yet as to whether any conveyance activities of the Agency require WDRs or an NPDES Permit; nonetheless, the Executive Officer characterizes the water flowing within waters with the aid of a pump as being “discharged” in the 8 listed categories of information requested, and requires the Agency to submit permit applications as the mechanism to furnish the requested information, rather that simply asking the Agency to submit the requested information in a more informal manner for further evaluation, analysis, and conclusion.

D. **The Executive Officer’s Issuance of the Request is Not Reasonable as Required by Water Code section 13000**

The California Legislature has found and declared that activities affecting water quality “shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.” *See Water Code §13000* (emphasis added). This section sets state policy and imposes an overriding requirement on the Regional Boards that all orders be reasonable considering all circumstances.

The Regional Water Board Executive Officer’s issuance of the Request is not reasonable, considering all of the related circumstances. The Executive Officer attempts to obtain information that might be relevant to determining whether the Agency is “discharging” waste or pollutants to waters of the State or United States that may implicate WDR or NPDES permit requirements. However, before the information is submitted or any evaluation is performed to make that
determination (admitted as necessary by the Executive Officer twice in the Request), the Executive
Officer nonetheless requires the Agency to submit permit applications for both WDRs and an
NPDES permit. Even worse, to comply with the Request, the only way the requested factual
information can be submitted is via permit applications that have not yet been properly determined
as being necessary. Requiring information to be furnished in this manner, as opposed to other
means, (e.g., via a report as contemplated by Water Code section 13267, or otherwise) is
procedurally irregular, prejudicial to the Agency, and puts the "cart before the horse." Further, the
ROWD Form 200 and USEPA Forms 1 and 2A provide no clear method by which to submit the
requested information, since their purpose is not for the routine submission of information, but
rather, for submission of information relevant to preparation and issuance of a WDR or NPDES
Permit. The Executive Officer's action in issuing the Request is clearly unreasonable and does not
comport with mandated duties under Water Code section 13000.

E. The Executive Officer's Issuance of the Request is Contrary to Water Code
sections 13260 and 13376.

As recited in the Request, Water Code section 13260 requires a person to submit a ROWD
and secure WDRs when that person is "discharging waste, or proposing to discharge waste, within
any region that could affect the quality of the waters of the state." (Cal. Water Code §13260(a).)
Water Code section 13376 requires a person to submit a ROWD and secure an NPDES permit when
that person "discharges pollutants or proposes to discharge pollutants to the navigable waters of the
United States within the jurisdiction of this state ..." (Cal. Water Code §13376) In this case, and as
twice admitted by the Request, no factual determination has yet been made as to whether any
pumping activities conducted by the Agency satisfy the elements of either Water Code section
13260 or 13376. Thus, the Executive Officer's demand that the Agency submit a ROWD and
USEPA Forms 1 and 2-A so as to secure WDRs and/or an NPDES permit is unsupported and
contrary to the express terms of Water Code sections 13260 and 13376. No such demand can be
made by the Executive Officer at this point.
For these reasons, the Agency requests the State Water Board to deem the Executive Officer’s April 18, 2012 Request inappropriate and improper in accordance with Water Code section 13320(c) and to set aside the Request in accordance with 23 C.C.R. §2052(a)(2)(B).

F. The Executive Officer’s Issuance of the Request is Not Supported by Findings and Evidence in the Administrative Record.

Orders issued by the Regional Water Board not supported by the findings, or findings not supported by the evidence, constitute an abuse of discretion. Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506, 515; California Edison v. SWRCB, 116 Cal. App.3d 751, 761 (4th Dt. 1981); see also In the Matter of the Petition of City and County of San Francisco, et al., State Board Order No. WQ-95-4 at 10 (Sept. 21, 1995). The Regional Water Board Executive Officer’s issuance of the Request is not supported by adequate findings, and findings made are not supported by evidence in the administrative record.

The Request suffers from inadequate findings and a lack of evidence to justify the demands of the Request. By the very fact that the Executive Officer is requesting information regarding the Agency’s activities, not otherwise available in the administrative record of the Regional Water Board, necessary to evaluate whether the Agency is “discharging” waste or pollutants that may implicate WDR or NPDES permit requirements, indicates that no findings can yet be made by the Executive Officer with respect to that issue. Certainly, no findings made could be supported by evidence in the administrative record. Thus, the Executive Officer’s use of the word “discharge” or “discharged” in the 8 categories of requested information to characterize Agency activities is not supported by evidence in the administrative record.

Further, the plain language of the Request indicates that the Executive Officer and other Regional Water Board staff require the information requested before they can even “evaluate if pollutants are being discharged into waters of the United States or of the state and if [the Agency] will be required to obtain a NPDES permit or other [sic] type of permit” from the Regional Water Board. (See Request at page 2) Therefore, the Executive Officer’s demand that the Agency submit permit applications now, that will be used to determine whether a permit application is, in fact,
necessary in the future, is certainly not supported by findings or evidence in the administrative record. In fact, the administrative record is utterly void of any evidence that would support the Executive Officer's demand. Finally, no findings were made, and no evidence currently exists in the administrative record to support a finding (as recognized by the Request itself), that the Agency is either discharging waste that could affect the quality of the waters of the state or discharging pollutants to navigable waters of the United States, a prerequisite under Water Code sections 13260 and 13376 that must be satisfied before a permit must be obtained; therefore, the Executive Officer's demand for permit applications is wholly unsubstantiated.

For these reasons, the State Water Board should find that the Regional Water Board's Executive Officer abused his discretion when issuing the April 18, 2012 Request as the Request was not supported by adequate findings, and the findings made were not supported by evidence in the administrative record.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL WATER BOARD AND TO THE DISCHARGER:

A true and correct copy of this Petition was mailed by First Class mail on May 18, 2012, to the Regional Water Board at the following address:

Roger W. Briggs
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place
Suite 101
San Luis Obispo, California 93401

9. A STATEMENT THAT THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL BOARD, OR AN EXPLANATION WHY NOT:

The April 18, 2012 Request was issued by the Executive Officer of the Regional Water Board without public notice and/or a comment period. For this reason, the Agency had no opportunity to formally raise the substantive issues or objections contained in this Petition to the Regional Water Board prior to issuance of the Request.
10. **PETITIONER’S REQUEST FOR ABYEYANCE:**

The Agency wishes to place its Petition for Review in abeyance pursuant to 23 C.C.R. §2050.5(d) to allow time for the Agency to attempt to resolve its concerns with the Regional Water Board.

DATED: May 18, 2012

Respectfully submitted,

Nicol E. Granquist

[Signature]

Nicol E. Granquist
EXHIBIT A
Central Coast Regional Water Quality Control Board

April 18, 2012

Mr. David E. Chardavoyne
Interim General Manager
chamblissws@co.monterey.ca.us
Monterey County Water Resources Agency
P.O. Box 930
Salinas, CA 93902

Dear Mr. Chardavoyne:

REQUEST FOR INFORMATION - REPORT OF WASTE DISCHARGE

Central Coast Regional Water Quality Control Board (Central Coast Water Board) staff understands that the Monterey County Water Resources Agency (MCWRA) periodically pumps surface water from flood channels, such as the Blanco Drain and the Reclamation Ditch, directly into other waterbodies (e.g., the Salinas River). Both the Federal Water Pollution Control Act Section 402 and California Water Code Section 13376 require any person or entity that discharges pollutants, or proposes to discharge pollutants, to navigable waters of the United States to obtain a National Pollutant Discharge Elimination System (NPDES) permit. In addition, Section 13260(a) of the Porter Cologne Water Quality Control Act states: Each of the following persons shall file with the appropriate regional board a report of the discharge, containing the information that may be required by the regional board: (1) A person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system. The Central Coast Water Board is responsible for issuing waste discharge requirements, including NPDES permits, in Monterey County.

In order to evaluate if these types of discharges contain pollutants and if waste discharge requirements or NPDES permits are required, the Central Coast Water Board requires you to submit the following information by May 31, 2012:

1. How many pumping locations exist and where are they? Please provide a map showing the locations.
2. Why is the water discharged?
3. When is the water discharged?
4. How much water is discharged?
5. Does your agency monitor the volume and chemistry of the discharges, or the effects of the discharges on receiving waters?
6. What is the quality of the discharged water with respect to potential pollutants?
7. What is the quality of the receiving waters with respect to potential pollutants?
8. Which branch of MCWRA oversees these activities?
The information should be transmitted on the Report of Waste Discharge forms that can be found at:

1. Application/Report of Waste Discharge General Information Form for Waste Discharge Requirements or NPDES Permit (Form 200). This form may be acquired from the State Water Resource Control Board’s website at http://www.waterboards.ca.gov/centralcoast/Applications/Form200/Form200.pdf

2. United States Environmental Protection Agency (USEPA) General Information Form (Form 1). This form may be acquired from the USEPA’s website at www.epa.gov/npdes/pubs/form_1.pdf

3. USEPA Application Overview Form (Form 2-A). This form may be acquired from USEPA’s website at www.epa.gov/npdes/pubs/final2a.pdf

Based on the information you provide, Central Coast Water Board staff will evaluate if pollutants are being discharged into waters of the United States or of the state and if you will be required to obtain a NPDES permit or another type of permit from our agency. If we determine that a permit is needed, Water Board staff will contact you to discuss our permitting process.

This requirement that MCWRA submit a report of waste discharge is made pursuant to sections 13260 and 13376 of the California Water Code. Section 13261 of the Water Code states that a violation of a request made pursuant to Water Code Section 13260 may subject the Discharger to administrative civil liability of up to $1,000 per day. Pursuant to Section 13385 of the Water Code, a violation of a Water Code Section 13376 requirement may subject you to civil liability of up to $10,000 per day for each day in which the violation occurs.

Any person aggrieved by this action of the Central Coast Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of the order, except that if the thirtieth day following the date of the order falls on a Saturday, Sunday, or state holiday, the petition must be received by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

If you have questions regarding the requirements in this letter, please call Sheila Soderberg (805) 549-3592 or ssoderberg@waterboards.ca.gov or Mike Higgins at (805) 542-4649 or mhiggins@waterboards.ca.gov

Sincerely,

Roger W. Briggs
Executive Officer
cc:
Mr. Brent Buche, Assistant General Manager, MCWRA bucheb@co.monterey.ca.us
Ms. Jennifer Epp, Water Board jepp@waterboards.ca.gov
centralcoast@waterboards.ca.gov
Ms. Deirdre Whalen, Monterey Bay National Marine Sanctuary, deirdre.whalen@noaa.gov
Mr. Jamie Marincola, US EPA Region IX, Marincola.JamesPaul@epa.gov
Mr. Steve Shimek, Monterey Coastkeeper, exec@otterproject.org
EXHIBIT B
MONTEREY COASTKEEPER, a project of The Otter Project, a nonprofit organization,

Petitioner-Plaintiff,

v.

MONTEREY COUNTY WATER RESOURCES AGENCY, a public agency,

Respondent-Defendant.

Petitioner-Plaintiff Monterey Coastkeeper hereby seeks a writ of mandate and judgment declaring that Respondent-Defendant Monterey County Water Resources Agency has violated and continues to violate the Porter-Cologne Water Quality Control Act, as well as its public trust fiduciary duties, by discharging pesticides, nutrients, sediments, pathogens, and other harmful agricultural pollutants into surface and subsurface waters in the Salinas River watershed at levels that exceed water quality standards and injure public health, fish and wildlife, and other beneficial uses of such waters. Petitioner-Plaintiff also hereby seeks a court order directing Respondent-Defendant to cease its unlawful discharges and to abate the public nuisance caused by these discharges. In support of this petition and complaint, Petitioner-Plaintiff alleges as follows:

INTRODUCTION

1. This case concerns the continuing conduct of the Monterey County Water Resources Agency in discharging harmful agricultural pollutants to surface water and groundwater within its jurisdiction. These toxic and injurious discharges violate the agency's mandatory legal obligations, impair beneficial uses of the receiving waters, and cause injury to public health, welfare, and the environment, including to fish and wildlife that depend upon unpolluted water for their survival. Accordingly, Monterey Coastkeeper seeks a judicial determination that the agency's harmful discharge practices violate California law, as well as a writ of mandate to enjoin Respondent-Defendant's unlawful activities and compel compliance with applicable law.

PARTIES

2. Petitioner-Plaintiff Monterey Coastkeeper is a program of The Otter Project, a non-profit organization with approximately 3,000 members ("Monterey Coastkeeper"). Monterey Coastkeeper is part of The Waterkeeper Alliance, a national and international network of independent water "keepers" who champion clean water and healthy waterways. The Monterey Coastkeeper service area includes all of Monterey and Santa Cruz Counties, as well as portions of San Mateo, Santa Clara and San Benito Counties. Monterey Coastkeeper was formed to address issues of water quality within its service area, and it uses policy and legal advocacy to ensure that development, industrial, and urban activities do not impair the environmental needs of the communities that Coastkeeper serves. Since its inception, Monterey Coastkeeper has been engaged in advocating for effective government regulations, good public policy, and an active community role in protecting freshwater and marine waters alike.

3. Monterey Coastkeeper and its staff and members regularly use and enjoy waters within its service area for a variety of recreational, aesthetic, educational, and scientific purposes, including, but not limited to, hiking, fishing, swimming, boating, wildlife observation, scientific research, photography, nature study, and aesthetic appreciation. Monterey Coastkeeper and its staff and members intend to do all of the foregoing on an ongoing basis in the future and thereby do and will continue to derive recreational, aesthetic, scientific,
educational, conservational, and economic benefits from the waters affected by Respondent-Defendant's discharges. These benefits and the recreational, aesthetic, scientific, educational, conservational, and economic interests of Monterey Coastkeeper and its staff and members have been and, in the absence of relief from the court, will continue to be adversely affected by Respondent-Defendant’s discharge practices in violation of its mandatory duties under state law.

4. Respondent-Defendant Monterey County Water Resources Agency (“MCWRA”) is the primary water management agency for Monterey County. MCWRA is the successor-in-interest to the Monterey County Flood Control and Water Conservation District, which was created in 1947 by Chapter 699 of the Statutes. In 1990, the California Legislature created MCWRA by special state legislation, codified as Chapter 52 of the Appendix to the California Water Code, and conferred upon it broad powers to manage water supply and water quality in Monterey County, including in the northern Salinas Valley. MCWRA is responsible for managing, protecting, and enhancing water supply and water quality in the lower Salinas River watershed, as well as providing flood protection in the County of Monterey.

5. Among other things, MCWRA is authorized by state law to, and does, operate the Nacimiento and San Antonio Reservoirs for flood management and water supply purposes, including through periodic groundwater recharge. MCWRA provides water to agricultural growers and landowners within the Salinas River watershed and collects agricultural wastewater from growers and landowners for discharge into state waters. In particular, MCWRA operates the “Reclamation Ditch” and the “Blanco Drain,” both of which channelize and convey contaminated agricultural wastewater from the point of generation on individual farmland in the lower Salinas River Valley to downstream receiving waters, including the Salinas River and Tembladero Slough.

JURISDICTION AND VENUE

6. This court has jurisdiction over this action under California Code of Civil Procedure section 1085, California Code of Civil Procedure section 731, and California Civil Code section 3493.
7. Venue in this court is proper under California Code of Civil Procedure section 395.

BACKGROUND

8. Agricultural discharges of pesticides, nutrients, sediment, pathogens, and other pollutants at levels that exceed applicable state water quality standards have contributed and continue to contribute to significant deterioration of water quality throughout the lower Salinas River watershed. These agricultural discharges have impacted both surface and subsurface waters. For many water bodies in the watershed, agriculture discharges are a primary source of degraded water quality conditions.

9. Agricultural pollution loads in the Salinas Valley watershed are higher than in other agricultural areas. In a statewide study of four agricultural areas, the California Department of Pesticide Regulation found that the Salinas study area has the highest percent of surface water sites with detected pyrethroid pesticides (85 percent), the highest percent of sites that exceed expected toxic levels (42 percent), and the highest application rate (by threefold) for active pesticide ingredients applied to the land (113 lbs/acre).

10. As a result of this ongoing agricultural pollution, nearly every surface water tributary and every receiving water within the lower Salinas River watershed is listed or proposed for listing as “impaired” under the section 303(d) of the federal Clean Water Act, 33 U.S.C. 1313(d). An impaired water body is one that is not meeting applicable water quality standards and for which the State must, by law, develop and implement “total maximum daily loads” to achieve compliance with applicable standards. In the lower Salinas River drainage and adjacent Elkhorn Slough, the State of California has identified more than 130 impairments, the majority of which are caused by agricultural discharges.

11. This surface water contamination impairs designated beneficial and public uses. The California Regional Water Quality Control Board for the Central Coast (“Regional Board”) has determined that “large stretches of rivers in the entire region’s major watersheds have been severely impaired or completely destroyed by severe toxicity from pesticides” and that most of the surface water bodies in the region are no longer “suitable for safe recreational fishing or to
support aquatic life.” Concerns about health impacts from exposure to contaminated water reduce boating and fishing opportunities for the public and significantly impair recreational and aesthetic interests in these public resources.

12. Agricultural contamination of surface water also threatens the ecological health of the region. The Salinas River and Elkhorn Slough provide important habitat for fish and wildlife, and both water bodies support world-renowned national wildlife refuges. These waters, in turn, flow into the Monterey Bay National Marine Sanctuary, a critical feature of the unique California Current marine ecosystem. Data show that habitat conditions for sea otters, steelhead trout, benthic macroinvertebrates, and other native species occupying these waters are being degraded and adversely impacted by the discharge of pesticides, nutrients, sediments, pathogens, and other agricultural pollutants.

13. Agricultural pollution also adversely impacts groundwater throughout the lower Salinas River watershed. Within the northern Salinas Valley, the Regional Board has found that 25 percent of 352 wells sampled—or 88 wells—contain nitrate concentrations above the drinking water standard for that contaminant. In portions of the Salinas Valley, up to approximately 50 percent of the wells surveyed contain nitrate concentrations above the drinking water standard. The average nitrate concentration in these wells is nearly double the drinking water standard, and the highest detected nitrate concentration is approximately nine times the drinking water standard. This contamination is caused primarily by the percolation of agricultural chemicals and pollutants through soil and subsurface waters.

14. Based on monitoring data, the Regional Board has concluded that “thousands of people [in the Central Coast region] are drinking water contaminated with unsafe levels of nitrate or are drinking replacement water to avoid drinking contaminated water” and that “[t]he cost to society for treating [this] polluted drinking water is estimated to be in the hundreds of millions of dollars.” The United States Environmental Protection Agency warns that “[i]nfan ts who drink water containing nitrates in excess of the [drinking water standard] could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.”
15. Through its day-to-day management activities, MCWRA actively facilitates and contributes to the discharge of agricultural pollution to surface and subsurface water in the Salinas River watershed. MCWRA has erected and operates an extensive infrastructure to transport water into the Salinas Valley from the distant Nacimiento and San Antonio Reservoirs. MCWRA regularly recharges the groundwater aquifer in the lower Salinas River region with water transported from these reservoirs. Growers and landowners then pay MCWRA to withdraw and use this recharged groundwater for irrigating cropland. But for MCWRA’s active management and regular recharge of the subsurface aquifer, growers and landowners in the northern Salinas Valley would be unable to sustain irrigation of their lands at existing levels over the long term.

16. Due to the poor drainage attributes of the soils in this area, many or most farm operators who irrigate their cropland affirmatively channel return flows from their fields into drainage canals operated by MCWRA. In particular, the so-called “Reclamation Ditch” operated by MCWRA collects contaminated agricultural wastewater from adjacent farmland and discharges it into Tembladero Slough, which in turn empties into the Salinas River, Elkhorn Slough, and ultimately the Pacific Ocean. Similarly, the so-called “Blanco Drain” operated by MCWRA collects contaminated irrigation return flow from adjacent low-lying farmland and actively pumps that collected water into the Salinas River. But for the operation of these wastewater conveyance facilities by MCWRA, contaminated agricultural return flows from much of the cropland in the lower Salinas River region would not reach or pollute the Salinas River, Tembladero Slough, or Elkhorn Slough.

17. The pollutants contained in discharges from the Reclamation Ditch and the Blanco Drain exceed state water quality standards set forth in the Water Quality Control Plan for the Central Coast Region (“Basin Plan”) for the designated beneficial uses of the Salinas River, Tembladero Slough, and Elkhorn Slough and have contributed to impairment of these designated beneficial uses. Monterey Coastkeeper is informed and believes, and on that basis alleges, that in managing the Reclamation Ditch and the Blanco Drain, MCWRA has not undertaken action or instituted protective measures to minimize or mitigate the contamination in surface water.
18. The application of irrigation water to Salinas Valley cropland treated with pesticides or fertilizer has resulted in the percolation of pollutants, including but not limited to nitrates, into underlying groundwater. The subsequent movement of these agricultural pollutants through the groundwater aquifer has contaminated drinking water resources at levels that exceed applicable legal standards and threaten public health. Monterey Coastkeeper is informed and believes, and on that basis alleges, that in managing withdrawals from and recharge of groundwater in the lower Salinas Valley, MCWRA has not undertaken action or instituted protective measures to minimize or mitigate nitrate or other contamination in subsurface water.

19. As a public agency, MCWRA has a legal obligation under state law to protect the public trust uses of navigable waters and their non-navigable tributaries. These public trust uses include, but are not limited to, protection of fisheries and other wildlife in the Salinas River, Tembladero Slough, and Elkhorn Slough, as well as preservation of the ecological, aesthetic, and recreational uses of these waters. MCWRA’s public trust obligations extend to hydrologically connected groundwater, as well as non-navigable tributaries of these water bodies.

20. By allowing and contributing to the contamination of water resources in the Salinas Valley watershed to the detriment of their ecological, aesthetic, and recreational public trust values and uses, MCWRA is breaching its fiduciary obligations under the Public Trust Doctrine to the people of California and future generations.

21. Like all dischargers, MCWRA also has a legal duty to conform its actions and operations to the requirements of the Porter-Cologne Water Quality Control Act. Among other things, the Porter-Cologne Act mandates that a potential discharger submit a report of waste discharge to the Regional Board and comply with all state water quality standards set forth in the Basin Plan.

22. Monterey Coastkeeper is informed and believes, and on that basis alleges, that MCWRA has never submitted a report of waste discharge to the Regional Board for its discharges from the Reclamation Ditch and the Blanco Drain. Monterey Coastkeeper is further informed and believes, and on that basis alleges, that the Regional Board has never issued a
waste discharge requirement, a conditional waiver applicable to MCWRA, or any other
authorization to MCWRA for discharges from these conveyance channels into state waters.
MCWRA’s failure to submit a report of waste discharge and to obtain Regional Board
authorization for its agricultural discharges constitute ongoing breaches of its mandatory duties
under the Porter-Cologne Act.

23. Monterey Coastkeeper is informed and believes, and on that basis alleges, that the
amounts and types of pesticides and fertilizers applied to cropland that drains into the
Reclamation Ditch and the Blanco Drain have materially changed over the years since the
Porter-Cologne Act was adopted in 1969, resulting in new or different discharges to state waters.

24. The conversion of functioning wetlands into farmland and the removal of
vegetative buffer that helps filter contamination and reduce sedimentation also has materially
changed over the last several years, resulting in new or different discharges to state waters.

CLAIMS FOR RELIEF

First Cause of Action
(Violation of Section 13260 of the Porter-Cologne Act)

25. Monterey Coastkeeper realleges and incorporates by reference each and every
allegation contained in paragraphs 1 through 24 above as though fully set forth herein.

26. Any person, including a water agency or district, discharging or proposing to
discharge waste that could affect the quality of waters of the state must file a report of waste
discharge with the Regional Board. Cal. Water Code § 13260.

27. MCWRA continues to discharge pesticides, nutrients, sediments, pathogens, and
other pollutants into waters of the state, including the Salinas River and Tembladera Slough
from the Blanco Drain and Reclamation Ditch, but has not filed a report of waste discharge with
the Regional Board for these discharges.

28. MCWRA is not exempt from the requirement to file a report of waste discharge
by the “Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated
Lands” issued by the Regional Board because MCWRA is not an “owner and/or operator of
irrigated cropland on or from which there are discharges of waste that could affect the quality of
any surface water or groundwater.”
29. MCWRA's failure to file a report of water discharge constitutes an ongoing violation of its legal duty under the Porter-Cologne Water Quality Control Act for which Monterey Coastkeeper has no adequate remedy at law. This violation is actionable under California Civil Code section 1085.

Second Cause of Action
(Violation of Section 13264 of the Porter-Cologne Act)

30. Monterey Coastkeeper realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 24 above as though fully set forth herein.

31. No person, including a water agency or district, shall make any new discharge or a material change in an existing discharge until the Regional Board issues a waste discharge requirement for such new or materially changed discharge implementing the standards adopted in the Basin Plan. Cal. Water Code § 13264. The waste discharge requirement must take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, and the need to prevent nuisance. Cal. Water Code § 13263.

32. Since passage of the Porter-Cologne Water Quality Control Act in 1969, changes in crop rotation, pesticide and fertilizer use, vegetative buffers, and the operation of the Blanco Drain and Reclamation Ditch system have caused new or materially changed discharges by MCWRA into the Salinas River and Tembladero Slough, but MCWRA has not sought or received a waste discharge requirement from the Regional Board.

33. MCWRA is not exempt from the requirement to obtain a waste discharge requirement for new or materially changed existing discharges by the "Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands" issued by the Regional Board because MCWRA is not an "owner and/or operator of irrigated cropland on or from which there are discharges of waste that could affect the quality of any surface water or groundwater."

34. MCWRA's ongoing discharge of agricultural pollutants into state waters without a waste discharge requirement constitutes a violation of its legal duty under the Porter-Cologne Water Quality Control Act for which Monterey Coastkeeper has no adequate remedy at law. This violation is actionable under Cal. Civ. Proc. Code section 1085.
Third Cause of Action
(Violation of Section 13247 of the Porter-Cologne Act)

35. Monterey Coastkeeper realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 24 above as though fully set forth herein.

36. Every state agency must comply with approved or adopted water quality control plans in carrying out activities that may affect water quality. Cal. Water Code § 13247.

37. The Basin Plan prepared and adopted by the Regional Board is an approved water quality control plan which applies to the northern Salinas Valley watershed.

38. MCWRA is a state agency created and authorized by special state legislation enacted by the California Legislature and is subject to the requirements of California Water Code section 13247.


40. MCWRA’s ongoing discharge of agricultural pollutants into state waters at levels that exceed water quality standards approved in the Basin Plan constitutes a violation of its legal duty under the Porter-Cologne Water Quality Control Act for which Monterey Coastkeeper has no adequate remedy at law. This violation is actionable under Cal. Civ. Proc. Code section 1085.

Fourth Cause of Action
(Breach of Fiduciary Duty under California Public Trust Doctrine)

41. Monterey Coastkeeper realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 24 above as though fully set forth herein.

42. In California, the waters and streams of the State, and the fish, wildlife, and ecological values they support and sustain, belong to the public and are held in trust by the State for the benefit of the people of California and future generations.

43. The Salinas River, Tembladero Slough, and Elkhorn Slough are navigable waters of the State, and their water quality, fish and wildlife resources, and ecological, aesthetic and recreational value are subject to and protected by the Public Trust Doctrine.
44. The Public Trust Doctrine creates an affirmative and ongoing fiduciary duty in all California public agencies, including MCWRA, to protect and preserve these public trust resources for benefit of the people of California and future generations.

45. By channelizing and directing agricultural pollutants through the Blanco Drain and Reclamation Ditch and discharging those pollutants untreated into the Salinas River and Tembladero Slough at levels that exceed water quality standards and impair beneficial uses, MCWRA is violating its fiduciary duty to protect and preserve these public trust resources for the benefit of the people of California and future generations.

46. Monterey Coastkeeper has no adequate remedy at law for MCWRA’s ongoing injury to the public trust resources of the Salinas River, Tembladero Slough, and Elkhorn Slough. Accordingly, Monterey Coastkeeper seeks a judicial determination that MCWRA is violating its public trust obligations and an order directing MCWRA to comply with its public trust obligations to the people of California by ceasing such injurious discharges.

Fifth Cause of Action
(Abatement of Public Nuisance)

47. Monterey Coastkeeper realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 24 above as though fully set forth herein.

48. MCWRA’s discharge of pesticides, nutrients, sediments, pathogens, and other pollutants into the Salinas River and Tembladero Slough, and into hydrologically connected tributaries and groundwater constitutes a public nuisance and a nuisance per se.

49. The public nuisance caused by MCWRA’s discharges affect many members of the community who use or rely upon the Salinas River, Tembladero Slough, Elkhorn Slough, or hydrologically connected tributaries or groundwater.

50. The use and enjoyment of these state waters and public trust resources by Monterey Coastkeeper and its staff and members, as well as by the general public, is lessened and impaired by MCWRA’s discharge of pesticides, nutrients, sediments, pathogens, and other pollutants into these waters.

51. Monterey Coastkeeper and its staff and members suffer special injury from this public nuisance because they have a unique interest in safe drinking water and in the use and
enjoyment of the waters, fish, and wildlife of the Salinas River, Tembladero Slough, and Elkhorn Slough that is being impaired and lessened by agricultural pollution.

RELIEF REQUESTED

WHEREFORE, Petitioner-Plaintiff Monterey Coastkeeper prays for entry of judgment as follows:

1. For a declaratory judgment that Respondent-Defendant MCWRA has violated and continues to violate its mandatory duties under state law by:
   a. Failing to file a report of water discharge for its ongoing discharge of pesticides, nutrients, sediment, pathogens, or other agricultural pollutants into the Salinas River and Tembladero Slough from the Blanco Drain and the Reclamation Ditch, in violation of California Water Code section 13260;
   b. Causing a new or materially changed discharge of pesticides, nutrients, sediment, pathogens, or other agricultural pollutants into the Salinas River and Tembladero Slough from the Blanco Drain and the Reclamation Ditch without obtaining a waste discharge requirement for such new or changed discharges, in violation of California Water Code section 13264;
   c. Discharging pesticides, nutrients, sediment, pathogens, or other agricultural pollutants into the Salinas River and Tembladero Slough from the Blanco Drain and the Reclamation Ditch at levels that do not comply with the approved and adopted Basin Plan, in violation of California Water Code section 13247.

2. For a declaratory judgment that Respondent-Defendant MCWRA’s ongoing discharge of pesticides, nutrients, sediment, pathogens, or other agricultural pollutants into the Salinas River and Tembladero Slough from the Blanco Drain and Reclamation Ditch and into hydrologically connected groundwater violates MCWRA’s fiduciary trust obligations to Monterey Coastkeeper and the people of the State of California under the Public Trust Doctrine.

3. For a declaratory judgment that Respondent-Defendant MCWRA’s ongoing discharge of pesticides, nutrients, sediment, pathogens, or other agricultural pollutants into the
Salinas River and Tembladero Slough from the Blanco Drain and the Reclamation Ditch constitutes a public nuisance and/or a nuisance per se.

4. For a peremptory writ of mandate ordering Respondent-Defendant MCWRA to abate the public nuisance and cease all discharges from the Reclamation Ditch and Blanco Drain until those discharges are brought into full compliance with the requirements of law.

5. For an award to Petitioner-Plaintiff of its attorneys' fees and costs of suit (including reasonable attorney, witness, and consultant fees) as authorized by Cal. Civ. Proc. Code § 1021.5.

6. For any such other equitable or legal relief as the Court deems appropriate.

Date: October 21, 2010

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By: Deborah A. Sivas

Attorneys for Petitioner-Plaintiff MONTEREY COASTKEEPER
VERIFICATION

I am a representative of Petitioner-Plaintiff Monterey Coastkeeper and am authorized to execute this verification on its behalf. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory Relief and am familiar with its contents. I am informed and believe and on that ground allege that the matters stated in this Petition and Complaint are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 21, 2010

Steven J. Shimiek