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25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 FOR THE COUNTY OF SAN LUIS OBISPO

27 CARMEN ZAMORA, an individual, and
28 ENVIRONMENTAL LAW FOUNDATION, a
California nonprofit organization,

Petitioners,

vs.

CENTRAL COAST REGIONAL WATER
QUALITY CONTROL BOARD, a California
state agency,

Respondent.

CENTRAL COAST GROUNDWATER
COALITION, INC., a California nonprofit
organization,

Real Party in Interest.

Case No.

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

[Code Civ. Proc. §§ 1060, 1085, 1094.5]

**(1) Porter-Cologne Water Quality Control
Act, Water Code § 13000 et seq.**

**(2) California Public Records Act,
Government Code § 6250 et seq.**

1 Petitioners and Plaintiffs CARMEN ZAMORA (“Zamora”) and ENVIRONMENTAL
2 LAW FOUNDATION (“ELF”) (collectively “Petitioners”) petition this Court on their own be-
3 half and on behalf of the public interest pursuant to Code of Civil Procedure sections 1060,
4 1085, and 1094.5, Water Code section 13330, and Government Code section 6250 et seq., for a
5 writ of mandate and for declaratory relief, directed to Respondent CENTRAL COAST
6 REGIONAL WATER QUALITY CONTROL BOARD (“Regional Board”), and by this verified
7 petition and complaint allege as follows:

8 **INTRODUCTION**

9 1. State law requires the Regional Board to protect people who use groundwater to
10 drink, cook, and bathe along California’s Central Coast. Nitrate pollution from irrigated farm-
11 land is the preeminent threat to drinking water in the region. Small farmworker communities
12 who rely on groundwater for their drinking water bear the brunt of this pollution and are most
13 vulnerable to its effects. To protect them and the public, the Regional Board mandates and over-
14 sees monitoring of groundwater wells for nitrate pollution, notification of affected water users,
15 and compliance reporting from dischargers.

16 2. Notwithstanding this mandate, the Regional Board has approved a plan (the
17 “Workplan”) for Monterey, San Benito, Santa Clara, and Santa Cruz Counties, in which the Re-
18 gional Board abdicates those responsibilities to the Central Coast Groundwater Coalition (“Coa-
19 lition” or “CCGC”), an organization consisting solely of growers and their representatives. The
20 Coalition conducts the well sampling, interprets the results, decides whether to notify the dis-
21 chargers whose wells exceed the legal limit for nitrate as well as the well users, and exclusively
22 receives reports of the polluters’ compliance measures.

23 3. The Workplan is unlawful because it conceals from the Regional Board all data,
24 notices, and correspondence regarding the program. The information has become secret. It is
25 barely available to the Regional Board and expressly not available to anyone else, including the
26 affected public and well users. Thus, the Coalition’s role as an intermediary goes well beyond its
27 stated purpose of “reducing costs” to the regulated polluters. For the members who pay to join it,
28 the Coalition—and only the Coalition—performs all testing, exclusively receives the results, de-

1 termines in its own judgment whether the data are “valid,” determines alone whether there is an
2 exceedance, sends the required notification letter to the polluter, and receives confirmation let-
3 ters back from the polluter. But it keeps to itself all records of compliance and other materials.
4 While the Coalition provides limited summary information to the Regional Board, and allows it
5 access to some of the originals, the data are summarized, masked, and encoded. Originals are
6 never left in the Regional Board’s possession. In this way, the Coalition promises its members
7 that all the data, notices of noncompliance, compliance letters, and everything else will remain
8 secret and unavailable to the public.

9 4. The Regional Board’s approval of the Workplan thus allows the Coalition to keep
10 records of groundwater pollution secret. This violates the Water Code, the California Public
11 Records Act (“PRA”), and policies and regulations of the State Water Resources Control Board
12 (“State Board”) and the Regional Board.

13 5. The Regional Board’s approval of the Workplan also violates fundamental princi-
14 ples of democratic governance. The Regional Board has unlawfully delegated its responsibilities
15 to a private entity, one controlled entirely by those regulated and which is not answerable to the
16 Regional Board. The Regional Board has passed off its monitoring and enforcement powers to a
17 private entity, negating public disclosure and public enforcement obligations for those who
18 choose to pay to belong to a special club.

19 6. The arrangement between the Regional Board and the Coalition presents two posi-
20 sibilities for interpreting the status of the Coalition. One possibility is that the Coalition is a
21 purely private group and can keep its operations secret, in which case it cannot then have a role
22 in sending or receiving the public’s agencies materials or using its powers. Or, the Coalition is
23 acting as an agent of the public agency, in which case the documents must in turn be public.
24 What is impermissible is the interpretation intended by the Workplan that splits the difference.
25 The Coalition may not both wield the power of a public agency and simultaneously maintain the
26 secrecy of a private group.

27 7. This Petition and Complaint requests that the Court issue a writ of mandate vacat-
28 ing and setting aside the Regional Board’s order approving the Workplan and directing the Re-

1 gional Board to release the records of pollution which it and the Coalition wish to keep secret.
2 Additionally, Petitioners seek a declaration that this program is unlawful and that Petitioners are
3 entitled to relief.

4 **PARTIES**

5 8. Petitioner CARMEN ZAMORA is a resident of an unincorporated community
6 near the City of Soledad in Monterey County. Her small community of ten households is sur-
7 rounded by agricultural land and relies upon a groundwater well for its drinking water supply.
8 This groundwater well is contaminated by nitrate pollution.

9 9. Ms. Zamora is concerned about her community's lack of access to safe drinking
10 water and believes small communities like hers need to have access to information about where
11 contaminated water exists and to be able to verify that residents have been notified about their
12 water being contaminated. The Regional Board's approval of the Wokplan, which allows the
13 Coalition to maintain secret records and preclude public access to this information of public im-
14 portance directly harms Ms. Zamora. Ms. Zamora is therefore directly and beneficially interest-
15 ed in the issuance of the writ petitioned for here. Ms. Zamora brings this action on her own
16 behalf and in the public interest.

17 10. Petitioner ENVIRONMENTAL LAW FOUNDATION is a California nonprofit
18 organization founded on Earth Day in 1991. ELF has a longstanding interest in reducing pollu-
19 tion to groundwater and ensuring public access to clean and uncontaminated drinking water.
20 ELF is dedicated to the protection of human health and the environment. As such, ELF has a di-
21 rect interest in access to the data to which the Regional Board has prevented public access. Im-
22 plementation of the Workplan will deprive ELF and the public of important data which could be
23 used to inform affected populations of imminent harm to their drinking water, to determine
24 which growers are most responsible for pollution, and to study the agricultural practices that
25 could lead to reduced pollution. Additionally, ELF was harmed by the denial of its Public Rec-
26 ords Act requests. ELF brings this action on its own behalf and in the public interest. ELF's ad-
27 dress is 1736 Franklin Street, 9th Floor, Oakland, California 94612.

28 11. Respondent CENTRAL COAST REGIONAL WATER QUALITY CONTROL

1 BOARD is a California agency created under the laws and regulations of the State of California.
2 (Wat. Code § 13200 et seq.) It is engaged in the regulation of water within the Central Coast Re-
3 gion. The Regional Board is responsible for establishing water quality objectives, protecting
4 beneficial uses, and prevention of nuisance. (Wat. Code § 13241.) Under its powers to imple-
5 ment conditional waivers for a specific class of waste discharge such as discharges from irrigat-
6 ed agriculture (Wat. Code § 13269), the Regional Board regulates and monitors nitrate pollution
7 of groundwater, especially as this pollution affects drinking water wells. Additionally, the Re-
8 gional Board is a state agency within the meaning of Government Code section 6252(f) and is in
9 possession of records sought by Petitioners under the Public Records Act. The Regional Board's
10 address is 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906.

11 12. Real Party in Interest CENTRAL COAST GROUNDWATER COALITION, INC.
12 is a nonprofit organization founded in 2013. The Coalition is the entity designated under the
13 Workplan to conduct the monitoring program. According to its website, its primary purpose is to
14 represent growers to fulfill regulatory requirements. The Coalition's address is Post Office Box
15 828, Salinas, California 93902.

16 JURISDICTION AND VENUE

17 13. Petitioners bring this petition and complaint pursuant to Code of Civil Procedure
18 sections 1060, 1085, and 1094.5; Water Code section 13330; and Government Code sections
19 6258 and 6259.

20 14. This Court has jurisdiction over the Regional Board because the Regional Board
21 is a California state agency with the responsibility for permitting discharges into water in the
22 Central Coast region.

23 15. Venue is proper in the County of San Luis Obispo pursuant to Code of Civil Pro-
24 cedure sections 393 and 395. The Regional Board resides in, the acts and omissions complained
25 of herein occurred in, and the public records sought by Petitioners, or some portion of them, are
26 situated in the County of San Luis Obispo.

27 16. Under California law, a party that has participated in the regulatory process before
28 a regional water quality control board such as the Respondent Regional Board may subsequently

1 challenge the final agency action in court. (Wat. Code § 13330(a).) Pursuant to California Water
2 Code section 13320, ELF and Ms. Zamora petitioned the State Board seeking administrative re-
3 view of the Coalition program at issue in this action on January 7, 2015. The State Board failed
4 to act on this petition and therefore denied it by operation of law on April 8, 2015. The instant
5 petition for writ of mandate is timely filed within 30 days of the April 8, 2015 denial of Petition-
6 ers' State Board petition for administrative review. Petitioners have exhausted their administra-
7 tive remedies and this Court has jurisdiction to review the Regional Board's actions through this
8 petition for a writ of mandate.

9 17. The Regional Board has denied Petitioners' requests for public records, records to
10 which petitioners have a right of access under the Public Records Act. (Gov. Code § 6250 et
11 seq.)

12 18. Petitioners have exhausted administrative remedies and have no plain, speedy, or
13 adequate remedy in the ordinary course of law. The only relief that can be obtained by Petition-
14 ers is through the granting of this petition for a writ of mandate.

15 19. Declaratory relief is appropriate under Code of Civil Procedure section 1060.

16 STANDARD OF REVIEW

17 *Review of the Regional Board's Order*

18 20. After the State Board denies a petition for review of a Regional Board decision,
19 Water Code section 13330(b) provides that an aggrieved party may seek judicial review via a
20 petition for a writ of mandate. When reviewing such a petition for a writ of mandate, Code of
21 Civil Procedure section 1094.5 governs the proceedings. (Wat. Code § 13330(e).)

22 21. Water Code section 13330(e) further provides that the Court shall exercise its
23 "independent judgment on the evidence" in reviewing the Regional Board's action. The Court
24 also reviews questions of law using its independent judgment. (*Santa Clara Transp. Auth. v.*
25 *Rhea* (2006) 140 Cal.App.4th 1303, 1313.)

26 *Public Records Act Claim*

27 22. A court may review an action under the Public Records Act by a petition for a
28 writ of mandate. (Gov. Code § 6258; Code Civ. Proc. § 1085.) The Court reviews whether the

1 public official was justified in withholding the record. (Gov. Code § 6258.)

2 **STATEMENT OF FACTS**

3 23. Many of the workers on the large farms in the Central Coast live in small com-
4 munities where their primary source of drinking water is from groundwater wells. Many of these
5 wells, including the one serving Petitioner Zamora, are contaminated with nitrate.

6 24. Nitrate pollution is the preeminent threat to drinking water for farmworker com-
7 munities who live in the Central Coast Region.

8 25. Nitrate pollution traceable to irrigated agricultural operations is a significant
9 source of contamination of these communities' aquifers. Drinking water polluted with nitrate
10 harms people in many ways, and children are particularly vulnerable: birth defects, cancer, po-
11 tentially deadly "blue baby syndrome," thyroid, spleen, and kidney disease. Agricultural opera-
12 tions throughout the Central Coast Region, including in Santa Clara, Santa Cruz, San Benito,
13 and Monterey Counties, discharge nitrate pollution into groundwater every year.

14 ***The Regional Board's Conditional Waiver and the State Board's Review***

15 26. In 2012, the Regional Board issued a Conditional Waiver of Waste Discharge Re-
16 quirements for Irrigated Lands (Order No. R3-2012-011.) ("Conditional Waiver"). Along with
17 the Conditional Waiver, the Regional Board issued accompanying Monitoring and Reporting
18 Programs. (Regional Board Monitoring and Reporting Program Orders Nos. R3-2012-0011-01,
19 R3-2012-0011-02, and R3-2012-0011-03.) The Conditional Waiver and the Monitoring and Re-
20 porting Programs contained a monitoring and reporting scheme designed to inform the regional
21 board, local health authorities, and the public about nitrate pollution in groundwater.

22 27. Environmental groups and agricultural interests both petitioned the State Board
23 for review of the Conditional Waiver. In 2013, the State Board ruled on these petitions, modify-
24 ing several provisions of the Conditional Waiver by adopting State Board Order WQ 2013-0101
25 ("State Board Order").

26 28. In response to the environmental groups' petitions (and over the agricultural in-
27 terests' demand to strike the monitoring provisions entirely), the State Board Order strengthened
28 the Conditional Waiver's monitoring provisions governing public disclosure of nitrate standard

1 exceedances. Specifically, the State Board Order requires that dischargers test drinking water
2 wells for nitrate contamination. If a well tests above 45 milligrams per liter (mg/L) of nitrate as
3 NO₃, the discharger will be notified (“discharger notification letter”). The discharger must then
4 notify the well users in writing (“user notification”). This user notification must inform all well
5 users that the water is unfit for human consumption with an explicit warning not to use the water
6 for drinking or cooking. Once the discharger has complied with this notification requirement, it
7 must confirm (via a “confirmation letter”) to the Regional Board that it has taken these steps.

8 29. The confirmation letter must (1) confirm that the discharger notified domestic
9 well users, farm operators, and land owners of the exceedance; (2) confirm that the discharger
10 posted public health information and Regional Board guidance documents in English, Spanish,
11 and Chinese, as appropriate; and (3) describe whether the discharger has provided alternative
12 drinking water to the affected well users.

13 30. The mandatory testing, notification, and reporting requirements provide infor-
14 mation about where contaminated wells are located and how contaminated they are. The user
15 notification requirement specifically ensures that the people who are likely to drink contaminat-
16 ed water receive a warning not to do so. Finally, in some cases, dischargers are also required to
17 provide alternative drinking water supplies. The discharger notifications from the Regional
18 Board and the confirmation reports from the dischargers back to the Regional Board also serve
19 an important role as records both of the exceedance and that the discharger took the required ac-
20 tions in response to the exceedance.

21 31. Members of the public, including Petitioners, but also including local health au-
22 thorities and other nonprofit groups involved in public health protection efforts, use the user no-
23 tification letters, the discharger notification letters, and the confirmation letters to collect data
24 about the extent and effect of nitrate pollution.

25 32. Under the Workplan, a discharger can comply with this testing and notification
26 requirement in one of two ways. Under the “individual monitoring program,” a discharger con-
27 ducts (or contracts for) its own testing and a certified laboratory electronically transmits the re-
28 sults to the Regional Board. The Regional Board notifies the discharger if the domestic supply

1 well exceeds the drinking water standard. If it does, the discharger sends both the user notifica-
2 tion letters and the confirmation letters. Notably, all communications to and from the discharger
3 and the Regional Board are public records, fully subject to disclosure to any member of the pub-
4 lic who asks for them. California Rural Legal Assistance (“CRLA”) has asked for these materi-
5 als pursuant to the California Public Records Act and received them without delay or objection
6 from the Regional Board.

7 33. The second method, called the “third-party monitoring program,” is the subject of
8 this Petition. The third-party monitoring program employs a third-party cooperative to conduct
9 the testing. The stated reasoning for allowing third-party testing programs to fulfill monitoring
10 and reporting requirements of the Conditional Waiver for regulated dischargers is to minimize
11 and share testing costs through economies of scale. But under the approved Workplan, the Coali-
12 tion, with approval from the Regional Board, has transformed the third-party program into a
13 scheme for insulating growers from Regional Board oversight and public disclosure of data and
14 documents.

15 ***Review of the Coalition Program***

16 34. The State Board Order provides that interested parties are able to seek discretion-
17 ary review of any cooperative monitoring programs. The purpose of this requirement is “to en-
18 sure consistency with legal requirements . . . and provide sufficient feedback mechanisms for
19 determination of whether the required controls are achieving the Agricultural Order’s stated pur-
20 poses.”

21 35. The Regional Board conditionally approved the Coalition groundwater monitor-
22 ing program by a letter dated December 17, 2013. However, contrary to the State Board Order,
23 the Regional Board provided no procedural mechanism to seek discretionary review of this ac-
24 tion. This conditional approval and the accompanying lack of an opportunity for review repre-
25 sented the beginning of a long series of procedural maneuvers by the Regional Board that had
26 the effect of consistently shifting and reshaping the Coalition monitoring program. This also had
27 the effect of delaying any opportunity for review of the Coalition monitoring program for nearly
28 two years.

1 36. On June 5, 2014, six months after the conditional approval of the Coalition moni-
2 toring program, the Regional Board announced that it would allow parties an opportunity for
3 discretionary review of the cooperative monitoring program. The Regional Board’s June 5 an-
4 nouncement represented the first time that a review of the Workplan was permitted.

5 37. On behalf of petitioner Zamora, CRLA timely sought discretionary review of the
6 Coalition Workplan on July 3, 2014. CRLA requested that the Regional Board (1) bring the Coa-
7 lition’s notification process directly in alignment with the individual monitoring program’s noti-
8 fication process by requiring affirmative written copies of notification and confirmation letters,
9 and (2) requesting that the Regional Board not allow the Coalition to submit contour maps in
10 lieu of individual well data testing results. The Regional Board divided the discretionary review
11 into two parts. It heard the first part in July 2014 and the second part in November 2014.

12 38. On December 18, 2014, the Regional Board’s Executive Officer for the first time
13 responded to and denied the first portion of CRLA’s request for discretionary review. The De-
14 cember 18 letter discussed some modifications to the Coalition’s notification process made since
15 the filing of the July 3 discretionary review letter, but did not otherwise address or resolve the
16 concerns originally raised in CRLA’s discretionary review letter. This letter, together with a let-
17 ter dated December 8, 2014 that approved a modified proposed Workplan submitted by the Coa-
18 lition, represented the Regional Board’s final determination approving the Workplan.

19 ***The Workplan***

20 39. As approved in December 2014, the Workplan provides that the Coalition con-
21 ducts the required testing, exclusively sends the discharger notification letters, and exclusively
22 receives the confirmation letters. The Coalition determines on its own whether there is an ex-
23 ceedance, after delaying any reporting to perform some form of unspecified “validation” of the
24 data received. If the Coalition decides both that the result is “valid” and that the result exceeds
25 the nitrate limit, the Coalition, not the Regional Board, informs the member discharger. It is un-
26 known whether the Coalition has ever actually informed a member discharger of an exceedance:
27 neither the Coalition nor the Regional Board has provided any such notifications in response to
28 public records requests.

1 40. In the event that a notice of exceedance is in fact sent to a member discharger,
2 that grower is then required to inform at-risk water users. No notice is sent to the Regional
3 Board, nor is it available to the public. The member must then report any follow-up or compli-
4 ance measures taken (including whether the well users have been given access to a safe alterna-
5 tive source of water), but again this confirmation is not sent to the Regional Board or made
6 available to the public; rather, this information remains only within the Coalition.

7 41. The Coalition provides only an aggregated exceedance report to the Regional
8 Board, an anonymous list of Coalition member dischargers with limited summary information
9 concerning monitoring results and actions taken. This aggregated exceedance report is not tied
10 to a standard reporting schedule. The Regional Board does not receive any of the correspond-
11 ence between the discharger, the Coalition, and the well users. Rather, under the Workplan, the
12 Regional Board has the right, but not the obligation, to request the notification letters from the
13 Coalition.

14 42. In addition, the Coalition is required to bring copies of the discharger notification
15 and confirmation letters to quarterly meetings with the Regional Board. These meetings are held
16 at the Coalition's offices. Under the Workplan, Board staff is entitled to view these letters, but
17 may not copy or keep them. This procedure assures that no data, information or correspondence
18 becomes available to the public or well users through the Public Records Act or any other chan-
19 nel.

20 43. Only growers who pay to become members of the Coalition receive the benefit of
21 anonymous treatment of information concerning polluted drinking water wells on their property.
22 For all other growers, all the data, information and correspondence are treated as routinely pub-
23 lic, and, therefore, disclosed upon request.

24 44. There is another key difference between the individual and Coalition testing pro-
25 gram. When the Regional Board receives testing data from farmers in the individual program, it
26 publishes that data on GeoTracker, the state's user-friendly portal for groundwater information.
27 On GeoTracker, anyone can easily view this data and use its integrated mapping tools to see if
28 nearby wells exceed nitrate limits. But under the Coalition program, the testing data is not avail-

1 able to the public on GeoTracker. Instead, the Coalition submits “contour maps” which purport
2 to show contamination levels. These contour maps do not display contamination levels for indi-
3 vidual wells.

4 ***Petitioners’ Public Records Act Requests***

5 45. On December 11, 2014, CRLA submitted a Public Records Act request for:

- 6 a. “All Drinking Water Notification letters issued by the CCGC to its
7 members who are regulated under the Agricultural Order who have
8 one or more domestic drinking water wells which have exceeded the
9 nitrate drinking water standard through December 11, 2014”; and
10 b. “Written confirmations from CCGC members who have received
11 exceedance notifications—that these growers have notified domestic
12 well users of the nitrate exceedance, posted an appropriate public
13 health notification, and identified any treatment method or alterna-
14 tive drinking water supplies provided to ensure safe drinking water.”

15 46. In its response letter to CRLA, dated December 19, 2014, the Regional Board did
16 not provide any notification letters. It admitted, instead, that “[t]hese documents are available to
17 the Central Coast Water Board upon request and we have not requested any as of the date of this
18 letter.” The Regional Board did provide “exceedance reports” prepared by a consultant to the
19 Coalition. These reports were summaries, not the confirmation letters requested in CRLA’s De-
20 cember 11 letter.

21 47. On April 22, 2015, CRLA and ELF sent a Public Records Act request to the Coa-
22 lition, seeking the same notification letters and confirmation letters requested from the Regional
23 Board in its December 11 request. The Coalition responded on April 27, 2015. Counsel for the
24 Coalition stated that the Coalition would not provide the requested documents because it did not
25 believe that it had a legal obligation to do so under the Public Records Act. It also refused to
26 provide the documents voluntarily.

27 48. On April 22, 2015, CRLA and ELF submitted another follow up letter to the De-
28 cember 11, 2014 Public Records Act request to the Regional Board. The April 22 letter again
requested the confirmation letters and notification letters to and from Coalition members. The
Regional Board responded on May 1, 2015 and denied the request.

49. The Regional Board sent a letter dated May 7, 2015, in which the Regional Board
further elaborated its reasoning for the denial of the Petitioners’ April 22 request. The letter stat-

1 ed that the requested documents were not in its actual or constructive possession, and that there-
2 fore the records did not fall within the Public Records Act. The letter also contained conflicting
3 statements concerning whether and to what extent the Regional Board has control over the Coa-
4 lition with respect to the monitoring and notification program.

5 50. The Regional Board then requested, but did not require, that the Coalition turn
6 over the requested documents directly to CRLA via a letter to the Coalition also dated May 7,
7 2015. To date, the Coalition has given no indication that it will alter its earlier refusal to turn
8 over the documents as a result of this request.

9 ***Petitioners' State Board Petition***

10 51. Petitioners filed a petition before the State Board to review the Regional Board's
11 Workplan approval on January 7, 2015. Specifically, the petition challenged the denials of Peti-
12 tioner's requests for discretionary review of the Workplan, along with the approvals of the
13 Workplan itself. The Petition also challenged the Regional Board's failure to provide the docu-
14 ments in response to the December 11 PRA request. The State Board took no action on the peti-
15 tion, and it was therefore denied by operation of law as of April 8, 2015. (Wat. Code § 13330;
16 Cal. Code Regs., tit. 23, § 2050(e).)

17 52. On May 5, 2015, Petitioners submitted to the Regional Board a request for the
18 administrative record to be compiled.

19 **LEGAL BACKGROUND**

20 53. Division 7 of the Water Code, § 13000 et seq., also known by its title, "Porter-
21 Cologne Water Quality Control Act" ("Porter-Cologne"), protects all waters of the State of Cali-
22 fornia, including groundwater.

23 54. Porter-Cologne requires the Regional Board to develop a Basin Plan that protects
24 the beneficial uses of water in the Central Coast region. Drinking water use is one of the benefi-
25 cial uses that the Regional Board is required to protect. Porter-Cologne requires the Regional
26 Board to issue permits, or Waste Discharge Requirements, for any discharge into water, includ-
27 ing groundwater; these Waste Discharge Requirements prescribe requirements to meet the water
28 quality objectives and protect the beneficial uses contained in the Basin Plan. (Wat. Code

1 § 13263.)

2 55. State law and policy favor comprehensive groundwater monitoring programs that
3 promote human health, particularly for low-income populations. Water Code section 10781 re-
4 quires the state to develop testing and monitoring programs. And the Human Right to Water Act
5 declares it to be state policy that “every human being has the right to safe, clean, affordable, and
6 accessible water.” (Wat. Code § 106.3.) It further requires state agencies to consider the human
7 right to water when adopting any policy. (*Ibid.*)

8 56. Porter-Cologne allows the Regional Board to waive Waste Discharge Require-
9 ments for a specific class of waste discharge and issue a Conditional Waiver if the Board deter-
10 mines that the waiver is “consistent with any applicable state or regional water quality control
11 plan and is in the public interest.” (Wat. Code § 13269(a)(1).) A Regional Board may not waive
12 the requirement to comply with water quality objectives and policies.

13 57. Conditional Waivers must include monitoring requirements designed to verify the
14 adequacy and effectiveness of the waiver’s conditions. (Wat. Code § 13269(a)(2).) The results of
15 the Conditional Waiver’s monitoring program “shall be made available to the public.” (*Ibid.*)

16 58. The Regional Board may issue a Conditional Waiver only if it is consistent with
17 the Basin Plan. (Wat. Code § 13269(a)(1).) The Basin Plan incorporates the State Water Board’s
18 Nonpoint Source Pollution Control Program (“NPS Program”). The NPS Program is a compre-
19 hensive scheme for controlling pollution from nonpoint sources of water pollution, including
20 farms. Key Element 4 of the State’s NPS Program mandates that “[a]n NPS control implementa-
21 tion program shall include sufficient feedback mechanisms so that the [Regional Board], dis-
22 chargers, and the public can determine whether the program is achieving its stated purpose.”

23 59. Porter-Cologne allows a party to petition for State Board review of any action or
24 inaction by the Regional Board. (Wat. Code § 13320.) If the State Board denies the petition for
25 review, any aggrieved party may then seek judicial review. (Wat. Code § 13330(b).)

26 60. The California Public Records Act declares that “access to information concern-
27 ing the conduct of the people’s business is a fundamental and necessary right of every person in
28 this state.” (Gov. Code § 6250 et seq.) Under this statute, “[a] state or local agency may not al-

1 low another party to control the disclosure of information that is otherwise subject to disclo-
2 sure.” (Gov. Code § 6253.3.)

3 **FIRST CAUSE OF ACTION**
4 **(Administrative Mandate: Violation of the Porter-Cologne Water**
5 **Quality Act—Failure to Make Monitoring Results Public)**

6 61. Petitioners incorporate by reference and reallege the paragraphs set forth above.

7 62. Water Code section 13269(a)(2) requires that when a Regional Board issues a
8 Conditional Waiver, it must establish monitoring requirements. The results of this monitoring
9 “shall be made available to the public.” (*Ibid.*)

10 63. The groundwater data, notification letters, and compliance letters are “monitoring
11 results” under section 13269(a)(2). All of these elements are required by the State Board Order.
12 These letters are the record of the groundwater testing, whether there was an exceedance, and
13 whether the discharger complied with its obligation to inform the well users of the exceedance.

14 64. The Regional Board’s approval of the Workplan, as finalized in the December 8
15 letter, violates section 13269(a)(2)’s directive to make monitoring results public by creating a
16 system where the Coalition, not the Regional Board, keeps possession of the groundwater data,
17 notification letters, and compliance letters. The Coalition has refused requests for these docu-
18 ments. Regional Board has refused to provide them in response to Public Records Act requests.
19 Therefore, these monitoring results are not available to the public.

20 65. The weight of the evidence in the Regional Board’s administrative record does
21 not support a finding that the monitoring results are available to the public.

22 66. The weight of the evidence in the Regional Board’s administrative record does
23 not support a finding that the approval of the Workplan is in the public interest (Wat. Code
24 § 13269(a)(1).)

25 67. The Regional Board’s action in approving the Workplan but in not making the
26 monitoring results public is a prejudicial abuse of discretion because the Regional Board did not
27 act in the manner required by law.
28

1 **SECOND CAUSE OF ACTION**
2 **(Administrative Mandate: Violation of the Porter-Cologne Water**
3 **Quality Act—Unlawful Delegation of Regulatory Powers)**

4 68. Petitioners incorporate by reference and reallege the paragraphs set forth above.

5 69. A public agency unlawfully delegates its authority if it does not retain “ultimate
6 control over administration so that it may safeguard the public interest.” (*Intl. Longshoremen’s*
7 *and Warehousemen’s Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287,
8 297-98.)

9 70. The failure to make the monitoring results public is an invalid delegation of the
10 Regional Board’s authority to a nongovernmental entity, namely, the Coalition. The Workplan
11 allows the Coalition to keep the groundwater data, its validation process, the notification letters,
12 the compliance letters, even the fact of members’ noncompliance private. The Workplan allows
13 the Coalition to police its own members: without the obligation to turn over all notification and
14 confirmation letters, the Regional Board has no way to verify whether the Coalition is taking the
15 actions it is required to take. The Workplan’s policy of not allowing the Regional Board to main-
16 tain copies of the notification letters means that the Coalition, not the Regional Board, is
17 charged with the responsibility to regulate groundwater. The Regional Board has therefore dele-
18 gated its responsibility to regulate groundwater pollution to a third party.

19 71. The Regional Board’s action approving a Workplan that unlawfully delegates its
20 authority is a prejudicial abuse of discretion because the Regional Board did not act in the man-
21 ner required by law.

22 **THIRD CAUSE OF ACTION**
23 **(Administrative Mandate: Violation of the Porter-Cologne Water**
24 **Quality Act—Invalid Surrender of Police Powers)**

25 72. Petitioners incorporate by reference and reallege the paragraphs set forth above.

26 73. Any arrangement between a public agency and a private entity that surrenders the
27 agency’s police powers is invalid as against public policy. The “controlling consideration” is
28 whether the arrangement amounts to anything that can be characterized as a “surrender, abnega-
 tion, divestment, abridging, or bargaining away” of the public entity’s “control of a police power
 or municipal function.” (*County Mobilehome Positive Action Committee, Inc. v. County of San*

1 *Diego* (1998) 62 Cal.App.4th 727, 738.)

2 74. The failure to make the monitoring results public is an invalid surrender of the
3 Regional Board’s police powers. The Regional Board possesses regulatory police power. Regu-
4 lation of groundwater pollution and monitoring requirements are an expression of that power.
5 Under the Workplan, the Regional Board has given up its power to enforce the State Board Or-
6 der’s monitoring requirements. Instead, it has given that power to the Coalition. The Coalition
7 has the power to police its own members, and the Regional Board has no way to know whether
8 the members are complying with Workplan. And because the Coalition is not a public agency, its
9 enforcement actions against its members have no legal force.

10 75. The Regional Board’s action approving a Workplan that unlawfully surrenders its
11 police power is a prejudicial abuse of discretion because the Regional Board did not act in the
12 manner required by law.

13 **FOURTH CAUSE OF ACTION**
14 **(Administrative Mandate: Violation of the Porter-Cologne Water Quality**
Act—Failure to Comply with the Basin Plan’s Nonpoint Source Policy)

15 76. Petitioners incorporate by reference and reallege the paragraphs set forth above.

16 77. The Regional Board may issue a Conditional Waiver only if “the waiver is con-
17 sistent with any applicable state or regional water quality control plan and is in the public inter-
18 est.” (Wat. Code § 13269(a)(1).) The Central Coast Basin Plan incorporates the State Board’s
19 Nonpoint Source Pollution Control Program. All monitoring and reporting programs must there-
20 fore satisfy the Nonpoint Source Policy. NPS Policy Key Element 4 mandates that any program
21 such as the Workplan “shall include sufficient feedback mechanisms so that the RWQCB, dis-
22 chargers, *and the public* can determine whether the program is achieving its stated purpose(s).”
23 (Emphasis added.)

24 78. The purpose of the monitoring program is to increase awareness, information, and
25 communication regarding the location of contaminated drinking water wells.

26 79. Under the Workplan, however, the Regional Board does not receive the notifica-
27 tion letters of exceedances. And it does not receive the compliance letters from violators, or any
28 other correspondence between the Coalition and the member dischargers. Under no circum-

1 stances will the Regional Board receive enough information to be able to tell whether its pro-
2 gram is working. Thus, in contravention of the Nonpoint Source Policy, there is not a “sufficient
3 feedback mechanism” that enables the Regional Board to determine whether the program is
4 “achieving its stated purpose.”

5 80. Similarly, under the Workplan, the public does not have access to the confirma-
6 tion letters or notification letters. Under no circumstances will the public receive enough infor-
7 mation to be able to tell whether the program is working. Thus, in contravention of the Nonpoint
8 Source Policy, there is not a “sufficient feedback mechanism” that enables the public to deter-
9 mine whether the program is “achieving its stated purpose.”

10 81. The Workplan allows the Coalition to mask its members’ groundwater pollution
11 data by preventing the testing data from being publicly accessible on GeoTracker. No contour
12 map is an adequate substitute for actual data because contour maps do not display contamination
13 data for individual wells. The Workplan’s treatment of the groundwater testing data is not a suf-
14 ficient feedback mechanism for the public to determine whether the program is achieving its
15 state purpose.

16 82. By approving a Workplan that does not contain sufficient feedback mechanisms
17 for the Regional Board or the public to determine whether the program is achieving its purpose,
18 the Regional Board committed a prejudicial abuse of discretion by not proceeding according to
19 law.

20 83. The Regional Board has failed to demonstrate with the weight of the evidence
21 that the Workplan is in the public interest.

22 84. The weight of the evidence in the Regional Board’s administrative record is not
23 sufficient to show that the Regional Board complied with Key Element 4 of the Nonpoint Source
24 Policy. The Regional Boards findings are therefore not supported by the evidence and therefore
25 the Regional Board abused its discretion in approving the Workplan.

26 **FIFTH CAUSE OF ACTION**
27 **(Traditional Mandate: Violation of Article I, Section 3(b) of**
28 **the California Constitution and the Public Records Act)**

85. Petitioners incorporate by reference and reallege the paragraphs set forth above.

1 86. The Regional Board is a state agency within the meaning of the Public Records
2 Act. (Gov. Code § 6252(f).) Under the Public Records Act, “[a] state or local agency may not
3 allow another party to control the disclosure of information that is otherwise subject to disclo-
4 sure.” (Gov. Code § 6253.3.)

5 87. CRLA submitted a request to the Regional Board under the Public Records Act
6 for, inter alia:

- 7 a. All Drinking Water Notification letters issued by the CCGC to its
8 members who are regulated under the Agricultural Order who have
9 one or more domestic drinking water wells which have exceeded the
10 nitrate drinking water standard through December 11, 2014.
- 11 b. Written confirmations from CCGC members who have received ex-
12 ceedance notifications—that these growers have notified domestic
13 well users of the nitrate exceedance, posted an appropriate public
14 health notification, and identified any treatment method or alterna-
15 tive drinking water supplies provided to ensure safe drinking water.

16 88. On December 18, 2014, the Regional Board denied these requests. Rather than
17 providing the confirmation letters, the Regional Board produced an aggregated exceedance re-
18 port summarizing the exceedances. This report is not responsive to Petitioners’ requests. The
19 Regional Board further stated, “The Central Coast Water Board does not have any documents
20 responsive to your request for Drinking Water Notification letters issued by the CCGC to its
21 members. These documents are available to the Central Coast Water Board upon request and we
22 have not requested any as of the date of this letter.”

23 89. On April 22, 2015, ELF and CRLA again requested the same documents.

24 90. On May 1, 2015, the Regional Board again denied the request.

25 91. On May 7, 2015, the Regional Board sent a letter further elaborating on its rea-
26 soning for the denial of the Petitioners’ April 22 request. The letter stated that the requested doc-
27 uments were not in its actual or constructive possession, and that thus the records did not fall
28 within the Public Records Act.

 92. The Regional Board then requested, but did not require, that the Coalition turn
over the requested documents directly to CRLA via a letter to the Coalition also dated May 7,
2015. To date, the Coalition has given no indication that it will alter its earlier refusal to turn
over the documents as a result of this request.

1 93. The records requested are public records within the meaning of section 6252(e)
2 because they are “writing(s) containing information relating to the conduct of the public’s busi-
3 ness prepared, owned, used, or retained by any state or local agency regardless of physical form
4 or characteristics.” (Gov. Code § 6252(e).)

5 94. These documents, which are sent and received by the Coalition on behalf of the
6 Regional Board, are in the actual or constructive possession of the Regional Board.

7 95. The requested documents do not fall into any exemption contained in the Public
8 Records Act nor has the Regional Board claimed any such exemptions.

9 96. The Regional Board’s failure to make the requested public documents available
10 for copying and inspection violates Article I, Section 3(b) of the California Constitution, provid-
11 ing, inter alia, that the people have the right of access to information concerning the conduct of
12 the people’s business, and, therefore, the meetings of public bodies and the writings of public
13 officials and agencies shall be open to public scrutiny. It also violates Government Code section
14 6253(a) and (c), which sets forth the obligation to make public records open to inspection at all
15 times during the office hours of a state agency and for copying upon request.

16 97. A member of the public who believes that public records are being improperly
17 withheld may bring suit for mandate to enforce the Public Records Act. (Gov. Code §§ 6258,
18 6259(a).) If the Court finds that the public official’s decision to refuse disclosure is not justified,
19 it shall order the public official to make the records public. (Gov. Code § 6259(b).)

20 98. The Regional Board’s failure to disclose the requested records violates the Public
21 Records Act.

22 99. Respondent has a clear, present, and ministerial duty to comply with the Califor-
23 nia Constitution and with Government Code section 6250 et seq.

24 100. Petitioners are members of the public and are involved and beneficially interested
25 in the outcome of these proceedings. Petitioners have a clear, present and substantial right to the
26 relief sought herein. Petitioners have no other plain, speedy, and adequate remedy in the ordi-
27 nary course of the law, other than a writ issued by this Court, that would gain them their legal
28 right to inspect the requested documents.

**SIXTH CAUSE OF ACTION
(Declaratory Relief)**

101. Petitioners incorporate by reference and reallege the paragraphs set forth above.

102. Declaratory relief is appropriate under Code of Civil Procedure section 1060 because there is an actual controversy between Petitioners and the Regional Board and because a declaration of the Regional Board's duties is an appropriate subject for declaratory relief.

103. Based on the allegations herein alleged, Petitioners seek and are entitled to a declaration that:

- a. The Workplan is unlawful because it does not make monitoring results available to the public as required by Water Code section 13269(a)(2);
- b. The Workplan is unlawful because it delegates regulatory power to a private entity in contravention of law;
- c. The Workplan is unlawful because the Regional Board has surrendered its police powers in contravention of law;
- d. The Workplan violates the Nonpoint Source Policy because it does not provide sufficient feedback mechanisms to ensure that the program is achieving its stated purpose;
- e. The documents sought by Petitioners are in the possession of the Regional Board, either constructively or actually;
- f. The Coalition is acting as an agent for the Regional Board with respect to the requested records;
- g. The documents sought by Petitioners are public records subject to disclosure under the Public Records Act;
- h. All documents prepared, owned, used, or retained by the Coalition that relate to the testing of well data, notification to dischargers of exceedances, and compliance of dischargers, and any other documents prepared, owned, used or retained by the Coalition when the Coalition is fulfilling the duties and obligations delegated to it by the Regional Board are public records subject to disclosure under the Public Records Act.

- 1 i. The notification and confirmation letters are the “results of monitoring”
2 for the purposes of Water Code section 13269(a)(2); and
3 j. The Regional Board has unlawfully failed to make the results of monitor-
4 ing available to the public.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioners pray for relief as follows:

- 7 1. That the Court issue a writ of mandate requiring the Regional Board to vacate and
8 set aside its approvals of the Coalition Workplan.
- 9 2. That the Court issue a writ of mandate that further requires the Regional Board to
10 reissue any such approval only if the approval satisfies the following conditions:
- 11 a. The Regional Board must affirmatively require that the Coalition provide
12 copies of all drinking water well pollution data, all notification letters is-
13 sued to dischargers, and all compliance letters and other responses re-
14 ceived from dischargers directly to the Regional Board.
- 15 b. The Regional Board must affirmatively require that where a well shows an
16 exceedance, that data is immediately sent, without delay for “validation”
17 or any other reason by the Coalition, to the Regional Board and the local
18 health agencies. In addition, copies of any notification letter issued to dis-
19 chargers whose wells exceed nitrate exceedances must also be copied to
20 the local health agency.
- 21 c. The Regional Board must require all cooperative groundwater monitoring
22 programs, including the Coalition program at issue, to display monitoring
23 results on the public side of GeoTracker.
- 24 d. The Regional Board must make copies all notification letters issued to dis-
25 chargers, all compliance letters and other responses received from dis-
26 chargers, and all related correspondence available to the public upon
27 request.
- 28 3. That the Court order the Regional Board to immediately make the requested doc-

1 uments available to ELF and to any member of the public upon request.

2 4. For a declaration that (a) the Workplan is unlawful because it does not make mon-
3 itoring results available to the public as required by Water Code section 13269(a)(2); (b) the
4 Workplan is unlawful because it delegates regulatory power to a private entity in contravention
5 of law; (c) the Workplan is unlawful because the Regional Board has surrendered its police pow-
6 ers in contravention of law; (d) the Workplan violates the Nonpoint Source Policy because it
7 does not provide sufficient feedback mechanisms to ensure that the program is achieving its
8 stated purpose; (e) the documents sought by Petitioners are in the possession of the Regional
9 Board, either constructively or actually; (f) the Coalition is acting as an agent for the Regional
10 Board with respect to the requested records; (g) the documents sought by Petitioners are public
11 records subject to disclosure under the Public Records Act; (h) all documents prepared, owned,
12 used, or retained by the Coalition that relate to the testing of well data, notification to dis-
13 chargers of exceedances, and compliance of dischargers, and any other documents prepared,
14 owned, used or retained by the Coalition when the Coalition is fulfilling the duties and obliga-
15 tions delegated to it by the Regional Board are public records subject to disclosure under the
16 Public Records Act; (i) the notification and confirmation letters are the “results of monitoring”
17 for the purposes of Water Code section 13269(a)(2); and (j) the Regional Board has unlawfully
18 failed to make the results of monitoring available to the public.

19 5. That the Court award Petitioners their costs and expenses, including reasonable
20 attorney fees according to law.

21 6. For any other such relief as the Court deems proper.

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Dated: May 8, 2015

Respectfully submitted,
ENVIRONMENTAL LAW FOUNDATION



By: Nathaniel Kane
Attorneys for Petitioners Carmen Zamora
and Environmental Law Foundation

1 **VERIFICATION**

2 1. I am an attorney at law duly admitted and licensed to practice before the courts of
3 this State. I have my professional office at 1736 Franklin St., 9th Floor, Oakland, California
4 94612.

5 2. I am attorney of record for Environmental Law Foundation (“ELF”) and on behalf
6 of Carmen Zamora, the Petitioners in this action. My California State Bar number is 279394.

7 3. Petitioner Environmental Law Foundation is a 501(c)(3) nonprofit corporation
8 residing in Alameda County.

9 4. Petitioner Carmen Zamora is an individual residing in Monterey County and is
10 therefore absent from the county in which I have my office.

11 5. I have read the foregoing Verified Petition for Writ of Mandate and know the con-
12 tents thereof. The factual allegations therein are true of my own knowledge.

13
14 I declare under penalty of perjury, under the laws of the State of California, that the fore-
15 going is true and correct.

16 Executed this 8th day of May, 2015 at Oakland, California.

17
18 

19 _____
20 Nathaniel Kane
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