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13 Attorneys for Petitioners and Plaintiffs

14 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
15 IN AND FOR THE COUNTY OF SACRAMENTO

16 ENVIRONMENTAL PROTECTION )  
17 INFORMATION CENTER, a non-profit )  
18 corporation; DELTAKEEPER, a project of )  
19 WATERKEEPERS NORTHERN CALIFORNIA, )  
20 a non-profit corporation; and SIERRA CLUB, a )  
21 non-profit corporation, )

22 Petitioners and Plaintiffs, )

23 vs. )

24 CALIFORNIA REGIONAL WATER QUALITY )  
25 CONTROL BOARD – CENTRAL VALLEY )  
26 REGION, a state agency; CALIFORNIA )  
27 REGIONAL WATER QUALITY CONTROL )  
28 BOARD – LAHONTAN REGION, a state )  
29 agency; and STATE WATER RESOURCES )  
30 CONTROL BOARD, a state agency )

31 Respondents and Defendants. )

Case No.:

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

INTRODUCTION

1. By this action, petitioners and plaintiffs Environmental Protection Information Center, DeltaKeeper, a project of Waterkeepers Northern California, and Sierra Club (collectively “Petitioners”) challenge exemptions issued by two regional water quality control boards relieving all persons engaged in past, present and future logging operations throughout the entire Sierra Nevada Range and portions of the Cascade Range and Klamath Mountains from having to report and obtain permits for pollution discharges resulting from their logging activities. Petitioners challenge

1 Resolution No. R5-2003-0005, the “Conditional Waiver of Waste Discharge Requirements for  
2 Discharges Related to Timber Harvest Activities” (“Central Valley Waiver”) adopted by respondent  
3 and defendant California Regional Water Quality Control Board for the Central Valley Region  
4 (“Central Valley Regional Board”) on January 30, 2003. Petitioners also challenge Resolution No.  
5 R6T-2003-0001, the “Conditional Waiver of Waste Discharge Requirements for Discharges Related  
6 to Timber Harvest Activities in the Lahontan Region” (“Lahontan Waiver”) adopted by respondent  
7 and defendant California Regional Water Quality Control Board for the Lahontan Region  
8 (“Lahontan Regional Board”) on January 8, 2003. Lastly, Petitioners challenge Order Nos. WQO  
9 2004-0001 and WQO 2004-0002 adopted by respondent and defendant State Water Resources  
10 Control Board (“State Board”) on January 22, 2004, upholding, respectively, the Lahontan and  
11 Central Valley Waivers.

12 2. As detailed below, the Waivers purport to exempt commercial logging throughout the  
13 entire Sierra Nevada Range as well as portions of the Cascade Range and Klamath Mountains that  
14 define the northern end of the Central Valley watershed from the reporting and permitting  
15 requirements of the Porter-Cologne Water Quality Control Act (“Porter-Cologne”), Water Code  
16 § 13000 *et seq.*, so long as the logging operators receive California Department of Forestry or U.S.  
17 Forest Service approval and agree to abide by a few toothless conditions. As a result, the Central  
18 Valley and Lahontan Regional Boards – the very agencies entrusted by the state with protecting  
19 water quality within the critically important Central Valley watershed and the Sierra Nevadas – by  
20 adopting the waivers, have facilitated massive sedimentation, erosion, contamination from  
21 pesticides, and other serious environmental impacts caused by logging, all to the detriment of the  
22 public interest.

23 3. Despite the obvious potential for environmental harm associated with waiving the  
24 state’s primary water quality control law for a large class of polluters throughout vast expanses of  
25 California’s mountainous regions, each Regional Board prepared only a cursory initial study and  
26 negative declaration for purposes of compliance with the California Environmental Quality Act  
27 (“CEQA”), Pub. Res. Code § 21000 *et seq.* In so doing, the Regional Boards, as well as the State  
28 Board in upholding and/or relying on those documents, ignored substantial evidence in the

1 administrative record demonstrating both that the Department of Forestry and Forest Service  
2 regulations relied on by the Regional Boards to support the negative declaration have utterly failed  
3 to protect water quality and that the few conditions attached to the Waiver themselves will prove  
4 similarly ineffective. Petitioners, the general public, and the environment will suffer irreparable  
5 harm if the Resolutions are allowed to proceed in the absence of an environmental impact report.  
6 Accordingly, Petitioners respectfully request that this Court set aside the Waivers and accompanying  
7 negative declarations and order the Regional Boards to prepare a full environmental impact report  
8 prior to final approval of any further resolution waiving discharge requirements for timber harvest  
9 activities.

#### 10 **JURISDICTION AND VENUE**

11 4. This action is brought pursuant to Public Resources Code § 21167 and Code of Civil  
12 Procedure §§ 1085 and 1094.5. Venue is proper in the Superior Court for the County of Sacramento  
13 under Code of Civil Procedure § 401(1), because respondents Central Valley Regional Board,  
14 Lahontan Regional Board and State Board are state agencies and the California Attorney General has  
15 an office in Sacramento, California. In addition, respondents Central Valley Board and State Board  
16 have their principal offices in the County of Sacramento.

#### 17 **PARTIES**

18 5. Petitioner and plaintiff Environmental Protection Information Center (“EPIC”) is a  
19 non-profit public benefit corporation with approximately 3000 members organized under the laws of  
20 the State of California with its main office in Garberville, California. EPIC’s purpose is to protect  
21 and restore the biological diversity and ecosystem health of California’s rivers and forests. To this  
22 end, EPIC monitors state and federal environmental management activities to ensure compliance  
23 with current law. EPIC also serves as a community resource center for members of the public  
24 working to protect forest and stream ecosystems.

25 6. Petitioner and plaintiff Deltakeeper is a non-profit public benefit corporation  
26 organized under the laws of the State of California. The name “Deltakeeper” is a fictitious business  
27 name of Waterkeepers Northern California (“Waterkeepers”). Waterkeepers has approximately  
28 2,500 members. Waterkeepers’ main office is located in San Francisco, California and a second

1 office is located in Stockton, California. WaterKeepers is dedicated to the preservation, protection,  
2 and defense of the environment, wildlife, and natural resources of the San Francisco Bay and Delta  
3 watersheds. To further these goals, WaterKeepers actively seeks federal and state agency  
4 implementation of water quality laws and, when necessary, directly initiates administrative  
5 challenges and enforcement actions on behalf of itself and its members. Hereinafter, Waterkeepers  
6 shall be referred to as Deltakeeper.

7 7. Petitioner and plaintiff Sierra Club is a nationwide non-profit conservation  
8 organization formed in 1892, with over 600,000 members, approximately 185,000 of whom reside in  
9 California. The Sierra Club's purposes are to explore, enjoy, and protect the wild places of the  
10 Earth, to practice and promote the responsible uses of the Earth's ecosystems and resources, to  
11 educate and enlist humanity in the protection and restoration of the quality of the natural and human  
12 environment, and to use all lawful means to carry out those objectives. For many years the Sierra  
13 Club and its members have advocated for the protection of Sierra Nevada forest ecosystems.

14 8. Petitioners bring this action on their own behalf and on behalf of their members,  
15 employees, and/or supporters who are residents and taxpayers of the State of California. These  
16 persons live, work, and/or travel in areas throughout the Central Valley watershed and watersheds  
17 within the Sierra Nevadas, and they will suffer adverse impacts as a result of the Regional Boards'  
18 adoption of the Waivers as alleged herein. These impacts include, among other things, the  
19 degradation of water quality and soil erosion.

20 9. Respondent California Regional Water Quality Control Board, Central Valley Region  
21 is the state agency authorized under Porter-Cologne to issue water pollution control permits within  
22 the Central Valley's watershed and to waive certain reporting and permitting requirements only  
23 when it is in the public interest and consistent with the water quality control plan for the Central  
24 Valley region.

25 10. Respondent California Regional Water Quality Control Board, Lahontan Region is  
26 the state agency authorized under Porter-Cologne to issue water pollution control permits for  
27 pollution discharges to waters along the eastern edge of the State along the crest and eastern flanks  
28

1 of the Sierra Nevadas and to waive certain reporting and permitting requirements only when it is in  
2 the public interest and consistent with the water quality control plan for the Lahontan Region.

3 11. Respondent State Water Resources Control Board is the state agency authorized  
4 under Porter-Cologne to review permitting and waiver decisions by the Regional Boards.

### 5 **BACKGROUND**

#### 6 **Water Quality Control Within the Central Valley and Lahontan Regions**

7 12. The many tributaries and streams that form the watershed of California's vast Central  
8 Valley are essential to the economy and ecological integrity of California. Whitewater rivers such as  
9 the Feather, Mokelumne, American, Tuolumne, Merced, and Kern carry snowmelt and rain from the  
10 west slope of the Sierra Nevada mountain range down to the Sacramento and San Joaquin Rivers,  
11 which converge in the fertile Delta and continue west through San Francisco Bay to the Pacific  
12 Ocean. The Central Valley watershed drains more than 40 percent of California's annual  
13 precipitation and is the source of drinking water for two-thirds of the state's population. The Central  
14 Valley Regional Board has identified the Fall River as impaired by logging. The reason that many  
15 more rivers and streams are not yet identified as impaired by the Regional Board is the absence of  
16 monitoring data. If the tributaries of the main stem rivers in the Central Valley were monitored,  
17 many more would be identified as impaired by pollution associated with logging activities.

18 13. The Lahontan Region is graced with numerous natural treasures, including Lake  
19 Tahoe and Mono Lake. The Truckee, Carson and Walker Rivers are a main water supply for local  
20 Sierra residents as well as downstream residents of the State of Nevada. Logging has adversely  
21 affected Lake Tahoe, as well as the Truckee, Carson, Walker and other important drinking water  
22 sources highly valued by kayakers and recreationists. The Lahontan Regional Board has identified  
23 numerous rivers and lakes within the eastern Sierras as impaired with pollution resulting from,  
24 among other sources, logging operations, including Lake Tahoe, the Truckee and Carson Rivers,  
25 Bear, Pine, Ward, General, Gray, Bronco, Zayante, and Blackwood Creeks and Eagle Lake.

26 14. Under Porter-Cologne, the Regional Boards are responsible for protecting water  
27 quality within the watershed of the Central Valley. Water Code § 13200(g). To this end, Porter-  
28 Cologne requires the Regional Boards to "establish such water quality objectives in water quality

1 control plans as in its judgment will ensure the reasonable protection of beneficial uses and the  
2 prevention of nuisance.” *Id.* § 13241. Porter-Cologne further requires that all dischargers of  
3 pollutants report their discharges to the Regional Board governing the relevant region. *Id.* § 13260.  
4 On the basis of the discharge report, the Regional Boards are required to prescribe waste discharge  
5 requirements necessary to implement water quality control plans and protect beneficial uses. *Id.* §  
6 13263(a). However, both the duty to file a report and the discharge requirements themselves “may  
7 be waived by the state board or a regional board as to a specific discharge or type of discharge if the  
8 waiver if the state board or a regional board determines . . . that the waiver is consistent with any  
9 applicable state or regional water quality control plan and is in the public interest.” *Id.* § 13269(a).

### 10 **Timber Harvest and Water Quality**

11 15. Commercial logging occurs on an extremely large scale within the watershed of the  
12 Central Valley. Approximately 50% of the California’s timberland is located in this region, and the  
13 annual commercial harvest is over 1 billion board feet. This represents approximately 45% of the  
14 statewide harvest of commercial timber. Timber harvest on private land within the Central Valley  
15 watershed, particularly on the west slope of the Sierra, has increased dramatically in recent years.  
16 Sierra Pacific Industries, the region’s largest private landowner, is in the process of converting 70  
17 percent of its forest holdings into commercial tree plantations and has dramatically increased its use  
18 of clear cutting, as opposed to less destructive selective cutting, in this process. Timber harvest on  
19 federal lands is also expected to increase as federal forest regulations, including the Sierra Nevada  
20 Forest Plan Amendment and the National Forest Management Act planning regulations, are revised  
21 to accommodate increased logging.

22 16. Logging also is a major industrial activity within the Lahontan Region, including  
23 within the Lake Tahoe Basin.

24 17. On average, about 350 to 400 new logging projects are approved within the Central  
25 Valley Region every year. Each of these new logging projects includes new discharges or expanded  
26 discharges of pollution. The Central Valley Waiver authorizes pollution discharges from  
27 approximately 700 to 800 future logging operations.  
28

1           18.     On average, about 100 new logging projects are approved within the Lahontan  
2 Region every year. Each of these new logging projects includes new discharges or expanded  
3 discharges of pollution. The Lahontan Waiver authorizes pollution discharges from approximately  
4 500 future logging operations.

5           19.     In harvesting timber, ground is disturbed by the construction of roads, stream  
6 crossings, landings where logs are loaded onto trucks, skid trails and other areas where equipment  
7 hauls or drags logs, and areas where heavy equipment is used for site preparation prior to replanting  
8 trees. These activities result in the discharge of earthen materials such as soil, silt, sand, clay, and  
9 rock, as well as organic materials such as slash, sawdust, and bark, and can lead to increased water  
10 temperatures, erosion, stream sedimentation, and a host of other environmental problems.  
11 Commercial timber harvest also involves the use of numerous chemical pollutants, including  
12 herbicides, pesticides, and oil, all of which can be discharged into nearby waterways where they  
13 impact aquatic ecosystems and water quality.

14                   **The Waivers of Waste Discharge Requirements for Timber Harvest Activities**

15           20.     In 1982, the Central Valley Regional Board adopted Resolution No. 82-036 (“1982  
16 Waiver”), which waived waste discharge requirements pursuant to section 13269(a) of Porter-  
17 Cologne for discharges associated with timber harvest activities “operating under an approved  
18 timber harvest plan.” The 1982 Waiver was limited in its application, as it covered only logging on  
19 private land conducted pursuant to a timber harvest plan approved by the Department of Forestry.  
20 The 1982 Waiver did not apply to other logging on private land or logging administered by the  
21 Forest Service on federal land.

22           21.     In 1988, the Lahontan Regional Board adopted Resolution No. 6-88-18, which  
23 waived waste discharge requirements pursuant to section 13269(a) of Porter-Cologne for discharges  
24 associated with timber harvest activities.

25           22.     In 1999, Senate Bill 390 amended Porter-Cologne to provide that all waivers in effect  
26 on January 1, 2000, would expire on January 1, 2003, at which point they could only be renewed if,  
27 after a public hearing and compliance with CEQA, the appropriate regional water quality control  
28 board determined that the discharges should not be subjected to general and/or individual waste

1 discharge requirements. Water Code § 13269(b), (f). Senate Bill 390 also limited the term of any  
2 new waiver to five years. *Id.* § 13269(a)-(b).

3 23. On November 27, 2002, the Lahontan Regional Board, circulated a draft initial study  
4 and negative declaration in connection with its proposal to adopt a renewed waiver of waste  
5 discharge requirements for discharges related to timber harvest activities in the Lahontan Region.  
6 The new Lahontan Waiver exempts five specific categories of logging operations from Porter-  
7 Cologne’s reporting and permitting requirements, including logging operations that receive  
8 Department of Forestry or Forest Service approval, provided that the operators comply with certain  
9 general conditions. By Resolution No. R6T-2003-0001, dated January 8, 2003, the Lahontan  
10 Regional Board adopted the Lahontan Waiver and negative declaration.

11 24. On December 23, 2002, seven days before the 1982 Waiver’s sunset, the Central  
12 Valley Regional Board circulated a draft initial study and negative declaration in connection with its  
13 proposal to adopt a renewed waiver of waste discharge requirements for discharges related to timber  
14 harvest activities in the Central Valley Region. Nearly identical to the Lahontan Waiver, the new  
15 Central Valley Waiver exempts five specific categories of logging operations from Porter-Cologne’s  
16 reporting and permitting requirements, including logging operations that receive Department of  
17 Forestry or Forest Service approval, provided that the operators comply with certain general  
18 conditions. By Resolution No. R5-2003-0005, dated January 30, 2003, the Regional Board adopted  
19 the Waiver and negative declaration.

20 25. Petitioners, various agencies, other interested groups, and individuals made oral and  
21 written comments on the Central Valley and Lahontan Waivers, the accompanying initial studies and  
22 negative declarations and raised each of the legal deficiencies asserted in this petition prior to the  
23 State Board’s issuance of Orders Nos. 2004-0001 and WQO 2004-0002. Petitioners have exhausted  
24 their administrative remedies with respect to the claims raised herein.

25 26. Petitioners performed all conditions precedent to filing this action by complying with  
26 the requirements of Public Resources Code section 21167.5 in giving notice of this action to the  
27 Regional Board on April 29, 2003. A true and correct copy of Petitioners’ notice of intent to  
28



1 commence this CEQA action is attached hereto as Exhibit A and filed herewith as proof of its prior  
2 service by mail on the respondents.

3 27. On March 17, 2004, Petitioners requested that the Regional Boards and the State  
4 Board prepare a true and correct copy of the administrative record. A copy of that request is  
5 attached hereto as Exhibit B.

6 **STANDARD OF REVIEW**

7 28. Pursuant to Code of Civil Procedure section 1094.5, the inquiry for claims under  
8 Porter-Cologne extends to the question of whether Respondents have proceeded without or in excess  
9 of their jurisdiction and whether, in connection with the challenged Resolutions and Orders, there  
10 was any prejudicial abuse of discretion. Abuse of discretion is established where Respondents have  
11 not proceeded in the manner required by law, where the Resolutions and Orders are not supported by  
12 the findings, or where the findings are not supported by the evidence. Pursuant to Water Code  
13 § 13330(d), in its review of findings in a Regional or State Board order, “the Court shall exercise its  
14 independent judgment on the evidence.” Code Civ. Pro., § 1094.5(c) provides that in cases such as  
15 this “in which the Court is authorized by law to exercise its independent judgment on the evidence,  
16 abuse of discretion is established if the Court determines that the findings are not supported by the  
17 weight of the evidence.”

18 29. Pursuant to Code of Civil Procedure section 1094.5, the inquiry for claims under  
19 CEQA extends to the question of whether Respondents have proceeded without or in excess of their  
20 jurisdiction and whether, in connection with the challenged Resolutions and Orders, there was any  
21 prejudicial abuse of discretion. Abuse of discretion is established where Respondents have not  
22 proceeded in the manner required by law, where the Resolutions and Orders are not supported by the  
23 findings, or where the findings are not supported by the evidence. CCP section 1094.5(c) provides  
24 that in cases such as this “abuse of discretion is established if the court determines that the findings  
25 are not supported by substantial evidence in the light of the whole record.” The agency must prepare  
26 an EIR whenever substantial evidence in the record supports a “fair argument” that significant  
27 impacts may occur, even if contradictory evidence exists in the record. Pub. Res. Code § 21082.2(d).  
28

1 **FIRST CAUSE OF ACTION**

2 (Violation of Porter-Cologne Water Quality Control Act  
3 by Respondents Central Valley Regional Board and State Board)

4 30. Petitioners reallege, as if fully set forth herein, each and every allegation in the  
5 preceding paragraphs of this petition and complaint.

6 31. The Central Valley Regional Boards’ adoption of the Central Valley Waiver, and the  
7 State Board’s affirmance thereof, constitutes a prejudicial abuse of discretion in that the Central  
8 Valley Regional Board failed to proceed in the manner required by law and its decision is internally  
9 inconsistent and not supported by substantial evidence as follows:

10 **Failure to Protect the Public Interest**

11 32. The Porter-Cologne Act requires that any waiver of reporting and waste discharge  
12 requirements be consistent with the applicable regional water quality control plan and in the public  
13 interest. Water Code § 13269. Section 13269 does not authorize the Regional Board to waive  
14 compliance with its Basin Plan, the state and federal antidegradation policies, or any water quality  
15 objectives. “[A]ny activities and factors which may affect the quality of the waters of the state *shall*  
16 *be regulated* to attain the highest water quality which is reasonable...” Water Code §13000  
17 (emphasis added). The highest water quality which is reasonable is set forth in the Basin Plan for  
18 the Central Valley region. The Legislature did not intend for the regional boards to use waivers for  
19 substantial discharges of waste or discharges that may cause or contribute to violations of water  
20 quality objectives.

21 33. The Central Valley Regional Boards’ finding that the Central Valley Waiver is not  
22 against the public interest is inconsistent with the law because the Waiver does not assure  
23 compliance with water quality objectives.

24 34. The Central Valley Regional Boards’ finding that the Central Valley Waiver is not  
25 against the public interest is inconsistent with the law because the Waiver authorizes substantial  
26 discharges of waste contrary to the intent of the Legislature in adopting Water Code Section 13269.  
27 For the same reasons, Respondent State Board erred in affirming the Regional Board’s actions.  
28

1 **Failure to Comply With State's Antidegradation Policies**

2 35. The Regional Board's issuance of the Central Valley Waiver must be consistent with  
3 its Basin Plan. The State of California's antidegradation policy, State Board Resolution No. 68-16,  
4 is a requirement of the Central Valley Regional Board's Basin Plan. That policy restricts new or  
5 increased volumes of pollution into high quality waters of the Central Valley. The Central Valley  
6 Regional Board's Basin Plan identifies all waters within the region as high quality. The Central  
7 Valley Waiver is contrary to law, not supported by the weight of the evidence and contrary to the  
8 public interest because the Central Valley Regional Board failed to comply with the express terms of  
9 Resolution No. 68-16.

10 36. The Central Valley Regional Board abused its discretion by completely ignoring the  
11 antidegradation policy when it adopted the Central Valley Waiver.

12 37. The Central Valley Waiver is inconsistent with the Policy's mandate that waste  
13 discharge requirements implement the Policy for any new or increased volume of pollution  
14 discharges into high quality waters. The Central Valley Waiver is inconsistent with the Policy's  
15 mandate that persons discharging waste to high quality waters be required to apply the best  
16 practicable treatment and control measures necessary to assure no pollution or nuisance occurs and  
17 to maintain the highest quality of water consistent with maximum benefit to the people of the State.  
18 Lastly, the Central Valley Regional Board, in adopting the Waiver, failed to require the discharges  
19 addressed by the Waiver to meet their burden of proving that their discharges will not violate  
20 Resolution No. 68-16, as required by the Policy. For the same reasons, Respondent State Board  
21 erred in affirming the Regional Board's actions.

22 **Failure to Support Public Interest Finding With the Weight of the Evidence**

23 38. The Central Valley Regional Board's and State Board's findings that the Central  
24 Valley Waiver is not against the public interest are not supported by the weight of the evidence. The  
25 following are examples of evidence that does not support the agencies' findings that the Central  
26 Valley Waiver is in the public interest:

- 27 a. The record is replete with examples of logging pollution that have and continue to  
28 contribute to violations of water quality objectives in the Central Valley Region.

- 1 b. The record demonstrates that the Central Valley Waiver does not address  
2 cumulative watershed impacts that will result from pollution releases authorized  
3 by the Waiver.
- 4 c. The record demonstrates that the Central Valley Waiver does not provide for any  
5 water quality monitoring that would detect adverse impacts to water quality and  
6 beneficial uses from pollution releases authorized by the Waiver.
- 7 d. The record shows that the Waiver Conditions are contrary to the public interest  
8 because they merely duplicate efforts by other agencies without addressing the  
9 acknowledged inability of those processes to address key water quality concerns  
10 arising from logging.
- 11 e. The record demonstrates that by adopting the Central Valley Waiver, the Central  
12 Valley Regional Board acted contrary to the public interest by serving to deprive  
13 the agencies and the public from obtaining important information related to water  
14 quality that otherwise would have been collected by logging operators and  
15 provided to the Regional Board.
- 16 f. The record demonstrates that the Central Valley Regional Board's oversight of  
17 logging pollution discharges is chronically underfunded and understaffed and that,  
18 contrary to the public interest, the Central Valley Waiver exacerbates the agencies  
19 lack of resources by waiving the assessment of fees for logging discharges.
- 20 g. As described below, the Central Valley Waiver also is contrary to the public  
21 interest because it was issued in violation of CEQA.

22 39. For the same reasons, Respondent State Board erred in affirming the Regional  
23 Board's actions.

24 **SECOND CAUSE OF ACTION**

25 (Violations of CEQA by Respondents Central Valley Regional Board and State Board)

26 40. Petitioners reallege, as if fully set forth herein, each and every allegation in the  
27 preceding paragraphs of this petition and complaint  
28

1           41.     The Central Valley Regional Board’s adoption of the Waiver and accompanying  
2 negative declaration, and the State Board’s affirmance thereof, constitutes a prejudicial abuse of  
3 discretion. The Central Valley Regional Board and the State Board failed to proceed in the manner  
4 required by law and their decisions are not supported by substantial evidence as follows:

5                           **Failure to Support Negative Declarations with Substantial Evidence**

6           42.     CEQA requires that the Regional Boards support their conclusions in the negative  
7 declarations that their respective Waivers could not have a significant impact on the environment  
8 with substantial evidence. Pub. Res. Code §§ 21168, 21168.5.

9           43.     The finding by the Central Valley Regional Board in the negative declaration  
10 prepared for the Central Valley Waiver that authorizing hundreds of new logging pollution  
11 discharges could not have a significant effect on the environment is not supported by substantial  
12 evidence. For example, there is no evidence in the record to support the conclusion that authorizing  
13 discharges from hundreds of new logging projects likely will reduce discharges of logging-related  
14 pollutants, including for example, sediment to the state’s waters. Nor does the administrative record  
15 contain factual information regarding the number of future timber harvest plans and federal timber  
16 sales, the location of logging-related discharges, their volume and constituents, what if any  
17 management practices are being applied, whether those practices actually control any pollutants  
18 sufficiently to achieve water quality objectives and Basin Plan requirements, or the availability of  
19 other management practices. The initial study is not substantial evidence that the project could not  
20 have a significant effect on the environment because it does not disclose the evidence upon which it  
21 relies and asserts bare conclusions unsupported by any evidence or factual information.

22                           **Failure to Prepare an Environmental Impact Report**

23           44.     CEQA requires that, whenever the initial study or other evidence in the administrative  
24 record on a project contains substantial evidence supporting a fair argument that the project may  
25 produce one or more significant environmental effects, an environmental impact report must be  
26 prepared. Pub. Res. Code § 21082.2.

27           45.     As set forth in this petition and complaint, the administrative record in this case  
28 demonstrates that the Waiver may produce significant impacts on, among other things, water quality,

1 soils and geology, biological resources, hydrology, aesthetics, and air quality. In particular, the  
2 record contains substantial evidence demonstrating that logging activities discharge substantial  
3 quantities of pollutants to the State’s waters, in many instances in quantities or concentrations that  
4 cause or contribute to violations of water quality objectives, and that neither the Department of  
5 Forestry and Forest Service timber harvest approval processes nor the general conditions attached to  
6 the Waiver itself adequately mitigate the acknowledged environmental impacts associated with  
7 timber harvest. Nonetheless, the Central Valley Regional Board refused to prepare and circulate to  
8 the public an environmental impact report, confining its CEQA compliance to an inadequate  
9 negative declaration and initial study. The Central Valley Regional Board’s failure to prepare a full  
10 environmental impact report violates CEQA.

11 **Inadequate Project Description**

12 46. An initial study must contain an adequate description of the proposed project.  
13 14 C.C.R. § 15063(d)(1). CEQA Guidelines define the “project” as “the whole of an action, which  
14 has a potential for resulting in either a direct physical change in the environment or a reasonably  
15 foreseeable indirect physical change in the environment.” 14 C.C.R. § 15378(a).

16 47. The “description of the project” section of the initial study prepared by the Central  
17 Valley Regional Board for the Waiver is cursory at best and does not satisfy the minimum  
18 requirements for CEQA. For example, the description provides absolutely no meaningful  
19 information regarding the number of dischargers that would be governed by the waiver, the types of  
20 pollutants they would be expected to discharge, the volume of the discharges, or the location of the  
21 discharges.

22 **Inadequate Description of the Environmental Setting**

23 48. An initial study must also contain an adequate description of the environmental  
24 setting. 14 C.C.R. § 15603(d)(2).

25 49. The initial study for the Central Valley Waiver completely fails to provide any useful  
26 information about the current environmental conditions that exist throughout the Central Valley  
27 watershed. For example, no mention is made of current water quality conditions or the current  
28

1 extent of timber harvesting in the region, nor does the initial study include any discussion of  
2 endangered, threatened, or special status species in the affected environment.

3 **Failure to Consider Cumulative Impacts**

4 50. An environmental impact report must be prepared if the possible effects of a project,  
5 even if individually limited, are cumulatively considerable when viewed in connection with other  
6 past, present, and probable future projects. Pub. Res. Code § 21083(b).

7 51. The initial study for the Central Waiver utterly fails to analyze the cumulative  
8 impacts of waiving waste discharge requirements for timber operations throughout the entire Central  
9 Valley watershed, in violation of CEQA.

10 52. For the same reasons set forth in Paragraphs 40 through 51 above, Respondent State  
11 Board erred in affirming the Regional Board's actions.

12 **THIRD CAUSE OF ACTION**

13 (Violations of CEQA by Respondents Lahontan Regional Board and State Board)

14 53. Petitioners reallege, as if fully set forth herein, each and every allegation in the  
15 preceding paragraphs of this petition and complaint

16 54. The Lahontan Regional Board's adoption of the Lahontan Waiver and accompanying  
17 negative declaration, and the State Board's affirmance thereof, constitutes a prejudicial abuse of  
18 discretion. The Lahontan Regional Board and the State Board failed to proceed in the manner  
19 required by law and their decisions are not supported by substantial evidence as follows:

20 **Failure to Support Negative Declarations with Substantial Evidence**

21 55. CEQA requires that the Regional Boards support their conclusions in the negative  
22 declarations that their respective Waivers could not have a significant impact on the environment  
23 with substantial evidence. Pub. Res. Code §§ 21168, 21168.5.

24 56. The finding by the Lahontan Regional Board in the negative declaration prepared for  
25 the Lahontan Waiver that authorizing hundreds of new logging pollution discharges could not have a  
26 significant effect on the environment is not supported by substantial evidence. For example, there is  
27 no evidence in the record to support the conclusion that authorizing discharges from hundreds of  
28 new logging projects likely will reduce discharges of logging-related pollutants, including for

1 example, sediment to the state’s waters. Nor does the administrative record contain factual  
2 information regarding the number of future timber harvest plans and federal timber sales, the  
3 location of logging-related discharges, their volume and constituents, what if any management  
4 practices are being applied, whether those practices actually control any pollutants sufficiently to  
5 achieve water quality objectives and Basin Plan requirements, or the availability of other  
6 management practices. The initial study is not substantial evidence that the project could not have a  
7 significant effect on the environment because it does not disclose the evidence upon which it relies  
8 and asserts bare conclusions unsupported by any evidence or factual information.

9 **Failure to Prepare an Environmental Impact Report**

10 57. CEQA requires that, whenever the initial study or other evidence in the administrative  
11 record on a project contains substantial evidence supporting a fair argument that the project may  
12 produce one or more significant environmental effects, an environmental impact report must be  
13 prepared. Pub. Res. Code § 21082.2.

14 58. As set forth in this petition and complaint, the administrative record in this case  
15 demonstrates that the Lahontan Waiver may produce significant impacts on, among other things,  
16 water quality, soils and geology, biological resources, hydrology, aesthetics, and air quality. In  
17 particular, the record contains substantial evidence demonstrating that logging activities discharge  
18 substantial quantities of pollutants to the State’s waters, in many instances in quantities or  
19 concentrations that cause or contribute to violations of water quality objectives, and that neither the  
20 Department of Forestry and Forest Service timber harvest approval processes nor the general  
21 conditions attached to the Waiver itself adequately mitigate the acknowledged environmental  
22 impacts associated with timber harvest. Nonetheless, the Lahontan Regional Board refused to  
23 prepare and circulate to the public an environmental impact report, confining its CEQA compliance  
24 to an inadequate negative declaration and initial study. The Lahontan Regional Board’s failure to  
25 prepare a full environmental impact report violates CEQA.

26 **Inadequate Project Description**

27 59. An initial study must contain an adequate description of the proposed project.  
28 14 C.C.R. § 15063(d)(1). CEQA Guidelines define the “project” as “the whole of an action, which



1 has a potential for resulting in either a direct physical change in the environment or a reasonably  
2 foreseeable indirect physical change in the environment.” 14 C.C.R. § 15378(a).

3 60. The “description of the project” section of the initial study prepared by the Lahontan  
4 Regional Board for the Waiver is cursory at best and does not satisfy the minimum requirements for  
5 CEQA. For example, the description provides absolutely no meaningful information regarding the  
6 number of dischargers that would be governed by the waiver, the types of pollutants they would be  
7 expected to discharge, the volume of the discharges, or the location of the discharges.

#### 8 **Inadequate Description of the Environmental Setting**

9 61. An initial study must also contain an adequate description of the environmental  
10 setting. 14 C.C.R. § 15603(d)(2).

11 62. The initial study for the Lahontan Waiver completely fails to provide any useful  
12 information about the current environmental conditions that exist throughout the Lahontan Region.  
13 For example, no mention is made of current water quality conditions or the current extent of timber  
14 harvesting in the region, nor does the initial study include any discussion of endangered, threatened,  
15 or special status species in the affected environment.

#### 16 **Failure to Consider Cumulative Impacts**

17 63. An environmental impact report must be prepared if the possible effects of a project,  
18 even if individually limited, are cumulatively considerable when viewed in connection with other  
19 past, present, and probable future projects. Pub. Res. Code § 21083(b).

20 64. The initial study for the Lahontan Waiver utterly fails to analyze the cumulative  
21 impacts of waiving waste discharge requirements for timber operations throughout the entire  
22 Lahontan Region, in violation of CEQA.

23 65. For the same reasons set forth in Paragraphs 53 through 64 above, Respondent State  
24 Board erred in affirming the Lahontan Regional Board’s actions.

#### 25 **FOURTH CAUSE OF ACTION**

26 (Declaratory Relief)

27 66. Petitioners reallege, as if fully set forth herein, each and every allegation in the  
28 preceding paragraphs of this petition and complaint.



- 1 (b) Respondent Central Valley Regional Board to prepare, circulate, and consider  
2 a legally adequate environmental impact report and otherwise to comply with  
3 CEQA in any subsequent action to adopt a waiver of waste discharge  
4 requirements for timber harvest activities.
- 5 (c) Respondent Lahontan Regional Board to vacate and set aside Resolution No.  
6 R6T-2003-0001 and the accompanying negative declaration and initial study.
- 7 (d) Respondent Lahontan Regional Board to prepare, circulate, and consider a  
8 legally adequate environmental impact report and otherwise to comply with  
9 CEQA in any subsequent action to adopt a waiver of waste discharge  
10 requirements for timber harvest activities.
- 11 (e) Respondent State Board to vacate and set aside Order Nos. WQO 2004-0001  
12 and WQO 2004-0002.

13 2. For their costs of suit. Petitioners have incurred substantial costs that will continue to  
14 accrue in an amount not yet determined and are recoverable pursuant to California Code of Civil  
15 Procedure section 1021.

16 3. For an award of attorney's fees. Petitioners are entitled to an award of attorneys' fees,  
17 if they prevail in this action, pursuant to California Code of Civil Procedure section 1021.5 because  
18 this action seeks to enforce important rights affecting the public interest, which, if enforced, will  
19 confer significant benefits on the general public.

20 4. Other equitable or legal relief that the Court considers just and proper.

21 Dated: March 18, 2004

Respectfully submitted,

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25 Michael R. Lozeau  
26 Attorney for Petitioners and Plaintiffs  
27 Environmental Information Protection Center, *et al.*  
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1 VERIFICATION

2 I, Leo P. O'Brien, hereby declare:

3 I am the Executive Director of Waterkeepers Northern California, doing business as  
4 Deltakeeper. I have read the foregoing petition and complaint and am familiar with its contents.  
5 The facts alleged in the above petition and complaint are true of my personal knowledge, except as  
6 to those matters therein stated on information and belief, and, as to those matters, I believe them to  
7 be true. I declare under penalty of perjury under the laws of the State of California that the above is  
8 true and correct and that this verification is executed on this 18<sup>th</sup> day of March, 2004 at Oakland,  
9 California.

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13 Leo O'Brien  
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