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7 Attorneys for Plaintiffs:
8 Protecting Our Water and Environmental Resources
9 and California Sportfishing Protection Alliance

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF STANISLAUS**

12 PROTECTING OUR WATER AND
13 ENVIRONMENTAL RESOURCES; CALIFORNIA
14 SPORTFISHING PROTECTION ALLIANCE,

15 Plaintiffs,

16 vs.

17 STANISLAUS COUNTY; JAMI AGGERS, in her
18 official capacity as Director of Environmental
19 Resources, Department of Environmental Resources,
20 County of Stanislaus; JANIS MEIN, in her official
21 capacity as Manager of the Department of
22 Environmental Resources, County of Stanislaus; and
23 DOES 1 through 20,

24 Defendants,

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 Plaintiffs Protecting Our Water and Environmental Resources and the California Sportfishing
2 Protection Alliance, respectfully allege:

3 1. Jurisdiction of this Court is invoked pursuant to California Code of Civil Procedure §1060.

4 2. Plaintiff PROTECTING OUR WATER AND ENVIRONMENTAL RESOURCES (hereinafter
5 “POWER”) is an unincorporated association formed for the purpose of protecting and conserving the
6 groundwater resources and groundwater dependent ecological resources of Stanislaus County. POWER and
7 its members are beneficially interested in the ecological values, aesthetic enjoyment and continued
8 productivity of the land and water in the Stanislaus County area.

9 3. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (CSPA) is a California
10 non-profit public benefit conservation and research organization established in 1983 for the purpose of
11 conserving, restoring, and enhancing the state’s water quality, wildlife and fishery resources and their aquatic
12 ecosystems and associated riparian habitats.

13 4. Defendant, STANISLAUS COUNTY, is a public entity and political subdivision of the State of
14 California and a local public agency as defined in the California Environmental Quality Act. Defendant,
15 Jami Aggers, is the director of the Stanislaus County Department of Environmental Resources, and is named
16 herein as a Defendant solely in that capacity. Defendant, Janis Mein, is the manager of the Stanislaus
17 County Department of Environmental Resources, and is named herein as a Defendant solely in that capacity.
18 Defendants STANISLAUS COUNTY, Jami Aggers and Janis Mein, are hereinafter collectively referred to
19 as “County” or “Defendants.”

20 5. Plaintiffs do not know the true names and capacities of Defendants fictitiously named herein as
21 DOES 1 through 20, inclusive. Plaintiffs are informed and believe, and thereon alleges, that such fictitiously
22 named Respondents or Defendants are responsible in some manner for the acts or omissions complained of
23 or pending herein. Plaintiffs will amend this Petition to allege the fictitiously named Respondents’ true
24 names and capacities when ascertained.

25 6. Plaintiffs have performed all conditions precedent to the filing of this petition. Plaintiffs have no
26 administrative remedies to exhaust with respect to the claims alleged in this action.

27 7. The County issues well construction permits pursuant to Title 9, Chapter 9.36 of the Stanislaus
28 County Code.

29 8. The California Environmental Quality Act (“CEQA”) requires that public agencies determine
30 whether their “discretionary” decisions to approve projects that may affect the physical environment may

1 have significant adverse environmental effects. CEQA does not apply to “ministerial projects.” (Public
2 Resources Code § 21080(a), CEQA Guidelines § 15268.) A discretionary project is one that “requires the
3 exercise of judgment or deliberation when the public agency decides to approve or disapprove a particular
4 activity, as distinguished from situations where the public agency or body merely has to determine whether
5 there has been conformity with applicable statutes, ordinances or regulations.” (CEQA Guidelines § 15357.)
6 Ministerial projects, on the other hand “involve little or no personal judgment by the public official as to the
7 wisdom or manner of carrying the project. The public official merely applies the law to the facts as presented
8 but uses no special discretion or judgement in reaching a decision. A ministerial decision involves only the
9 use of fixed standards or objective measurements, and the public official cannot use personal, subjective
10 judgement in deciding whether or how the project should be carried out.”(CEQA Guidelines § 15369.)

11 9. Under well settled California law,

12 . . . the touchstone [for discretionary approvals] is whether the approval process involved allows the
13 government to shape the project in any way which could respond to any of the concerns which might
14 be identified in an environmental impact report. And when is government foreclosed from
15 influencing the shape of the project? Only when a private party can *legally compel* approval without
any changes in the design of its project which might alleviate adverse environmental consequences.

16 . . .
17 The term “ministerial” is limited to those approvals which can be legally compelled without
18 substantial modification or change. Thus, the fact a city lacks the discretion to deny a building
19 permit outright in the event environmental problems are identified does not make issuance of the
permit “ministerial.” It is enough the city retains discretion to require substantial changes in building
design.

20 An agency’s “classification of a certain approval process as ministerial is *not* conclusive.”

21 *Friends of Westwood, Inc. v. City of Los Angeles*, (1987) 191 Cal. App.3d 259, 267, 269-270; See *Miller*
22 *v. City of Hermosa Beach* (1993) 13 Cal. App. 4th 1118, 1139; *Day v. City of Glendale* (1975) 51 Cal. App.
23 3d 817, 823.

24 10. Section 9.36.150 thereof provides:

25 Except as may be otherwise provided by this chapter, standards for the construction, repair,
26 reconstruction or abandonment of wells shall be as set forth in Chapter II of the Department
27 of Water Resources Bulletin No. 74, “Water Well Standards” (February 1968), or as
subsequently revised or supplemented, which are incorporated in this chapter and made a part
of this chapter.

28 11. The Introduction to Chapter II of Department of Water Resources Bulletin No. 74, “Water Well
29 Standards” (February 1968), provides:

30 The standards presented in this chapter are intended to apply to construction (including

1 reconstruction) or destruction of wells throughout the State of California. Under certain
2 circumstances, adequate protection of ground water quality may require more stringent
3 standards than these presented here; under other circumstances, it may be necessary to
4 deviate from the standards or substitute other measures which will provide protection equal
5 to that provided by these standards. Since it is impractical to prepare standards for every
6 conceivable situation, provision has been made in the succeeding material for deviation from
7 the standards as well as for addition of appropriate supplementary standards. The need to
8 deviate from general recommendations and to apply additional standards are the principal
9 reasons that the Department is also investigating the development of different or
supplemental water well construction standards for various subareas within the State.
However, the Department believes that the standards presented in this report are satisfactory
under most conditions for the construction and destruction of water wells in all areas of this
state.

10 12. Subdivision A of Section 5 of Chapter II provides:

11 In locations where existing geologic or ground water conditions require standards more
12 restrictive than those described herein, or in addition to them, such special standards may be
prescribed by the enforcing agency.

13 13. Title 9, Chapter 9.36 of the Stanislaus County Code, and in particular section 9.36.150 thereof,
14 require that the County exercise discretion in deciding whether to issue well construction permits, because
15 the County may deny the permit or require changes in the project as a condition of permit approval to
16 address concerns relating to environmental impacts.

17 14. The County has engaged in, and continues to engage in, a pattern and practice of approving well
18 construction permits pursuant to Title 9, Chapter 9.36 of the Stanislaus County Code without applying the
19 environmental review procedures of CEQA to its permit approval decisions and without determining
20 whether its approval of such well construction permits may have significant adverse environmental effects
21 before making its permit approval decisions.

22 15. This pattern and practice represents County policy.

23 16. This County policy is illegal because these permit approval decisions are “discretionary.” Therefore,
24 the County is legally required to apply the environmental review procedures required by CEQA and to
25 determine whether its approval of such well construction permits may have significant adverse
26 environmental effects before making its permit approval decisions.

27 17. As a result of this policy, the County conducts no analysis of the cumulative impacts of the County’s
28 approval of hundreds of well construction permits each year.

29 18. At all times mentioned herein, Respondent County has been able to comply with CEQA in reviewing
30 and approving these permits. Notwithstanding such ability, Respondent County has failed and continues

1 to fail to perform its duty to review these permit applications pursuant to CEQA.

2 19. An actual and present controversy has arisen and now exists between Plaintiffs and County
3 concerning the County's pattern, practice and policy of not reviewing well construction permit applications
4 pursuant to CEQA, a policy which plaintiffs challenge herein as unlawful.

5 20. Pursuant to Public Resources Code § 21167.5, on January 7, 2014, and again on January 18, 2014,
6 Plaintiffs served the County, by mail, with written notice of their intent to commence this action. Copies of
7 these notices and of the proofs of service of these notice are attached hereto as Exhibit 1.

8 21. Pursuant to Public Resources Code § 21167.7 and Code of Civil Procedure section 388, on January
9 24, 2014, Plaintiffs served, by mail, notice of the filing of this action and a copy of this pleading to the
10 Attorney General's office. A copy of said notice and a copy of the proof of service of the notice and
11 pleading is attached hereto as Exhibit 2.

12 WHEREFORE, Plaintiffs prays for judgment as follows:

13 22. For a declaration that County has a policy of approving well construction permits pursuant to Title
14 9, Chapter 9.36 of the Stanislaus County Code without applying the environmental review procedures of
15 CEQA to its permit approval decisions and without determining whether its approval of such well
16 construction permits may have significant adverse environmental effects before making its permit approval
17 decisions; and that this policy is unlawful.

18 23. For a permanent injunction enjoining County from approving any well construction permits pursuant
19 to Title 9, Chapter 9.36 of the Stanislaus County Code until County changes its policy to apply CEQA to
20 its approval of these projects.

21 24. For reasonable attorney's fees under California Code of Civil Procedure section 1021.5.

22 25. For costs of suit.

23 26. For such other and further relief as the court deems proper.

24 DATED: January 24, 2014

LAW OFFICES OF THOMAS N. LIPPE, APC



By: _____

Thomas N. Lippe

Attorney for Plaintiffs

29 \\Lgw-12-19-12\l\Stanislaus Water\Trial\Pleadings\P002d Complaint for Declaratory Relief.wpd