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24 Attorneys for Petitioner
25 CALIFORNIA SPORTFISHING
26 PROTECTION ALLIANCE

27 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
28 **COUNTY OF SACRAMENTO**

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation;

Plaintiff,

vs.

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION, a
California State Agency,

Respondent,

EL DORADO IRRIGATION DISTRICT,
a public agency,

Real Party In Interest.

**VERIFIED PETITION
FOR WRIT OF MANDATE**

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

1 Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”)
2 brings this action on its behalf, on behalf of its members, on behalf of the general public and
3 in the public interest and, on information and belief, hereby petitions this court for a Writ of
4 Mandate:

5 **I. INTRODUCTION**

6 1. Petitioner brings this petition for Writ of Mandate pursuant to California Code
7 of Civil Procedure (“CCP”) §1094.5 to direct Respondent Regional Water Quality Control
8 Board, Central Valley Region (“Regional Board”), to set aside Regional Board Order No.
9 R5-2008-0173, issued to the El Dorado Irrigation District for the Deer Creek Wastewater
10 Treatment Plant (“Deer Creek Permit”), in order to bring the Deer Creek Permit into
11 conformity with the requirements of the Federal Water Pollution Control Act (the “Clean
12 Water Act” or “the Act”), State Water Resource Control Board Resolution 68-16 (Oct. 24,
13 1968)) (“State Anti-degradation Policy”), the Porter-Cologne Water Quality Control Act,
14 California Water Code §13000, *et seq.* (“Water Code”), and the Water Quality Control Plan
15 for the Sacramento and San Joaquin River Basins (“Basin Plan”).

16 2. The Regional Board prejudicially abused its discretion by approving the Deer
17 Creek Permit without undertaking any anti-degradation analysis; failing to include in the
18 Deer Creek Permit effluent limitations for aluminum and bis(2-ethylhexyl)phthalate in
19 accordance with 40 C.F.R. § 122.44 and California Water Code § 13377; developing
20 effluent limitations for metals using effluent hardness rather than the “actual ambient
21 hardness of the surface water”; issuing the Deer Creek Permit without any *Statement of*
22 *Basis*; failing to base its permitting decisions on the administrative record; failing to properly
23 notice the matter for public comment; and, failing to re-open the public comment period
24 upon significant changes to the initial draft permit, as required by law.

25 3. Petitioner alleges that there was sufficient evidence before the Regional Board
26 to establish that the Regional Board abused its discretion, as set forth herein.

27 4. This petition requests that the Court set aside the Deer Creek Permit and order
28 Respondent to comply with applicable legal requirements as described more fully below.

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II. THE PARTIES

5. Petitioner CSPA is a non-profit public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state’s water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has approximately 2,000 members who live, recreate and work in and around the waters of the State of California, including waterways throughout the Sierra Nevada, Central Valley and the Sacramento-San Joaquin River Delta Estuary. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California’s water quality and fisheries. This action is brought on CSPA’s behalf and on behalf of its members. CSPA’s address is 3536 Rainier Avenue, Stockton, California, 95204.

6. Respondent Regional Board is a state agency created under the laws and regulations of the State of California and is qualified to do and is engaged in the regulation of water quality within the Central Valley Region.

7. Real Party in Interest El Dorado Irrigation District (“EID”) is a public agency which discharges pollutants to Deer Creek pursuant to Regional Board Order No. R5-2008-0173.

8. Petitioner is informed and believes and thereon alleges that the Regional Board controls the operation, policies and activities of the water pollution permitting process.

9. Petitioner has exhausted administrative remedies and has no plain, speedy, or adequate remedy in the ordinary course of law; the only relief that can be obtained by Petitioner is through the granting of this writ of mandate.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over Respondent because it is a California public agency permitting discharges into water bodies in the Central Valley, with its headquarters in Rancho Cordova, California. Venue is proper in this Court because Respondent’s place of business is in Sacramento County, and therefore the Respondent is situated in Sacramento

1 County. (CCP §394, subd. (a).)

2 11. Under California law, a party which has participated in the regulatory process
3 may subsequently challenge the final agency action in court. (Water Code §13330, subds.
4 (a)-(b).)

5 12. CSPA is a party that actively participated in the review of the Deer Creek
6 Permit, the permit at issue in this action. CSPA raised each of the issues included in this
7 petition before the Regional Board during its administrative proceedings on Regional Board
8 Order No. R5-2008-0173.

9 13. On January 2, 2009, CSPA filed a petition for review with the State Water
10 Resources Control Board (“State Board”) requesting that it review each of the issues raised
11 in this petition. On July 30, 2009, the State Board issued a letter denying CSPA’s January 2,
12 2009 petition to review the Deer Creek Permit in its entirety pursuant to Title 23, Cal. Code
13 Regs § 2052, subd. (a)(1) on the ground that the petition failed to raise substantial issues that
14 are appropriate for review, and without addressing any of the issues set forth in the petition
15 for review. This petition for writ of mandate is timely filed within 30 days of the State
16 Board’s decision denying review of CSPA’s claims.

17 **IV. STANDARD OF REVIEW**

18 14. Petitioner brings this writ of administrative mandamus pursuant to CCP §
19 1094.5, seeking judicial review of the Regional Board’s adoption of the Deer Creek Permit
20 to discharge wastewater into Deer Creek. Petitioner’s authority to challenge the Regional
21 Board’s decision in this Court is provided under Water Code § 13330. Actions arising under
22 § 13330 of the Water Code are governed by CCP § 1094.5. (Water Code §13330, subd.(d).)

23 15. CCP § 1094.5 provides that “the inquiry in such a case shall extend to the
24 questions whether the respondent has proceeded without, or in excess of, jurisdiction;
25 whether there was a fair trial; and whether there was any prejudicial abuse of discretion.
26 Abuse of discretion is established if the respondent has not proceeded in the manner required
27 by law, the order or decision is not supported by the findings, or the findings are not
28 supported by the evidence.” This establishes abuse of discretion as the appropriate standard

1 of review.

2 **V. FACTUAL BACKGROUND**

3 16. This action concerns the contamination of Deer Creek as a direct result of
4 legally inadequate protections against pollution from wastewater discharge. On December 4,
5 2008, in adopting Order number R5-2008-0173, the Regional Board granted to the EID a
6 National Pollution Discharge Elimination System (“NPDES”) permit and Waste Discharge
7 Requirements (“WDRs”) for the Deer Creek Wastewater Treatment Plant (“Deer Creek
8 WWTP”). This permit forms the basis for the petition at bar.

9 17. The EID owns and operates the Deer Creek WWTP, which provides sewer
10 service to the community of Cameron Park and the Deer Creek/Motherlode area, serving a
11 population of approximately 20,000 people. The facility has the design capacity to treat 3.6
12 million gallons per day (“MGD”) average dry weather flow, 13.1 MGD of unequalized peak
13 daily flow, and 10.3 MGD of peak equalized flow.

14 18. The Deer Creek WWTP discharges into Deer Creek, which is a water of the
15 United States and a tributary to the Cosumnes River within the San Joaquin River basin, and
16 to the Sacramento-San Joaquin River Delta.

17 19. The Basin Plan does not identify beneficial uses for Deer Creek, but does
18 identify beneficial uses for the Cosumnes River, of which Deer Creek is a tributary. The
19 Regional Board, in Order No. R5-2008-0173, has made a finding that “the beneficial uses
20 identified in the Basin Plan for the Cosumnes River are applicable to Deer Creek.” (See,
21 Order No. R5-2008-0173, Fact Sheet, Section III.C.2.e, at F-9.

22 20. The recognized beneficial uses of Deer Creek downstream from the discharges
23 at issue include municipal and domestic supply, agricultural irrigation, agricultural stock
24 watering, water contact recreation, other non-contact water recreation, warm freshwater
25 aquatic habitat, cold freshwater aquatic habitat, warm fish migration habitat, cold fish
26 migration habitat, warm and cold spawning habitat, and wildlife habitat.

27 21. The Sacramento-San Joaquin River Delta’s waterways are habitat and
28 migration corridors for a number of species protected under federal and state endangered

1 species acts, including Chinook salmon, Central Valley steelhead, and Delta smelt.

2 **The State Anti-degradation Policy**

3 22. The State Anti-degradation Policy, State Resolution 68-16 provides that “[a]ny
4 activity which produces or may produce a waste or increased volume or concentration of
5 waste and which discharges or proposes to discharge to existing high quality waters will be
6 required to meet waste discharge requirements which will result in the best practicable
7 treatment or control of the discharge necessary to assure that (a) pollution or nuisance will
8 not occur; and (b) the highest water quality consistent with maximum benefit to the people
9 of the State will be maintained.” (State Water Resource Control Board Resolution 68-16, at
10 2.)

11 23. The State Anti-degradation Policy’s requirements are a component of
12 enforceable water quality standards, or “state policy for water quality control”, as the
13 standards are called in California, and are required for permits issued pursuant to both the
14 State Water Plan and the Water Quality Control Plan for the Sacramento and San Joaquin
15 River Basins, including the permit at issue.

16 24. The State Board has interpreted the State Anti-degradation Policy to
17 incorporate the requirements of the federal anti-degradation requirements set out in 40
18 C.F.R. §131.12 where the federal policy applies under federal law.

19 **The Federal Anti-degradation Policy**

20 25. The federal anti-degradation requirements mandate that water quality
21 necessary to protect existing beneficial uses in a water body be maintained. (40 C.F.R.
22 §131.12 (a) (1).)

23 26. In addition, the federal anti-degradation policy mandates that, where the
24 quality of the waters exceed quality levels necessary to support propagation of fish, shellfish,
25 and wildlife and recreation in and on the water, that quality shall be maintained and
26 protected unless: (1) the State finds that allowing lower quality is necessary to accommodate
27 important economic or social development in the area in which the waters are located; (2)
28 the State assures that water quality shall be adequate to protect existing uses fully; and (3)

1 the State assures that the highest statutory and regulatory requirements for all new and
2 existing point sources and all cost-effective and reasonable best management practices for
3 non-point source control will be achieved. (40 C.F.R. § 131.12 (a) (2).)

4 27. The federal Clean Water Act defines “water quality standards” as “provisions
5 of State or Federal Law which consist of a designated use or uses for the waters of the
6 United States and water quality criteria for such waters based upon such uses.” (40 C.F.R. §
7 131.3, subd. (i).) Water quality standards must also include an anti-degradation policy and
8 implementation procedure consistent with 40 C.F.R. § 131.12. (40 C.F.R. § 131.6, subd. (d),
9 40 C.F.R. § 131.12.)

10 28. The federal anti-degradation policy establishes three levels, or tiers, of water
11 quality protection. The first level, Tier 1, requires that water quality necessary to protect
12 existing beneficial uses in a water body be maintained. (40 C.F.R. § 131.12(a) (1).) The
13 second level, Tier 2, for waters whose quality exceeds that necessary to support the
14 beneficial uses of the water, allows water quality to be degraded only if, among other things,
15 the Regional Board first finds that lower water quality is necessary to accommodate
16 important economic or social development in the area in which the water body is located.
17 (40 C.F.R. § 131.12 (a) (2).) The third level, Tier 3, for high quality waters that are also
18 “outstanding national” resources, such as waters of National or State parks and wildlife
19 refuges, and water of exceptional recreational or ecological significance, that water quality
20 must be maintained and protected. (40 C.F.R. § 131.12 (a) (3).)

21 29. Designation of the level of water quality protection afforded to a water body
22 and the analysis of how to maintain the appropriate level of water quality are based on the
23 quality of the water body -- not on the permitted activity. (40 C.F.R. §131.12.)

24 30. The Deer Creek Permit concedes that, “[b]ased on whole effluent chronic
25 toxicity testing performed by the Discharger from January 2005 through December 2007, *the*
26 *discharge could cause or contribute to an in-stream excursion above of [sic] the Basin*
27 *Plan’s narrative toxicity objective if there is not sufficient dilution in Deer Creek.”* (Deer
28

1 Creek Permit, at F-35.) Deer Creek is an ephemeral stream, without water for portions of the
2 Dry Season.

3 31. The Deer Creek Permit further concedes that, “[b]ased on quarterly whole
4 effluent chronic toxicity testing performed by the Discharger from January 2005 through
5 December 2007, the *discharge has reasonable potential to cause or contribute to an in-*
6 *stream excursion above of [sic] the Basin Plan’s narrative toxicity objective.* (Deer Creek
7 Permit, at F-49.)

8 32. Discharges from the Deer Creek WWTP caused chronic toxicity by reduced
9 survival, inhibited growth and reduced reproduction on October 23, 2007 and November 20,
10 2007; and reduced survival and inhibited growth on January 15, 2008. (Permit, Fact Sheet,
11 at F-33, “*Chronic Aquatic Toxicity*”, *Table F-8*).

12 33. Sampling and analysis of effluent from the Deer Creek Plant has detected
13 concentrations of bis(2-ethylhexyl)phthalate as high as 2.1 µg/l, which is above the
14 California Toxics Rule’s (“CTR”) Water Quality Standard 1.8 µg/liter for the pollutant
15 bis(2-ethylhexyl)phthalate.

16 34. Any party aggrieved by an order of a regional board for which the state board
17 denies review may obtain review of the order of the regional board by filing a petition for
18 writ of mandate not less than not later than 30 days from the date on which the state board
19 denies review. (Water Code § 13330, subd. (b).)

20 35. The Deer Creek Permit, Order R5-2008-0173, is an order of the Regional
21 Board within the meaning of Water Code § 13330 (b). The State Board’s dismissal of these
22 issues allows for review of the Regional Board’s abuse of discretion in this proceeding.

23 36. Petitioner is a “party aggrieved” within the meaning of Water Code § 13330
24 (b). Petitioner actively participated in the issuance of the Regional Board’s Deer Creek
25 Permit, including the timely submission of comments to the Regional Board and oral
26 testimony before the Regional Board at public hearings. CSPA has a beneficial interest in an
27 order requiring the Regional Board to re-issue the Deer Creek Permit in conformance with
28 all requirements of the Clean Water Act, State Anti-degradation Policy, the Water Code, and

1 the Basin Plan. CSPA is interested in having the laws properly executed and the Regional
2 Board's duties properly performed so that the public's right to, and interest in, environmental
3 protection is fully secured.

4 37. This writ of mandate is timely filed within 30 days of the State Board's denial
5 of Petitioner's petition for review.

6 38. By failing to undertake the anti-degradation analysis, failing to include effluent
7 limitations for aluminum and bis(2-ethylhexyl)phthalate in accordance with 40 C.F.R. §
8 122.44 and California Water Code § 13377, developing effluent limitations for metals using
9 effluent hardness rather than the "actual ambient hardness of the surface water", issuing the
10 Deer Creek Permit without any *Statement of Basis*, failing to base its permitting decisions on
11 the administrative record, failing to properly notice the matter for public comment, and
12 failing to re-open the public comment period upon significant changes to the initial draft
13 permit, as required by law, Respondent has committed an abuse of discretion in issuing the
14 Deer Creek Permit. Therefore, Petitioner requests that the Deer Creek Permit be set aside by
15 the court and re-issued in accordance with the correct procedures as described herein.

16
17 **VI. FIRST CAUSE OF ACTION**
18 **(Violations of State Anti-Degradation Resolution 68-16 and 40 CFR § 131.12)**

19 39. Petitioner incorporates by reference the allegations in the paragraphs set forth
20 above.

21 40. The Deer Creek Permit, Order R5-2008-0173, was approved by the California
22 Regional Water Quality Control Board, Central Valley Region on December 4, 2008, and
23 consisted of an NPDES and Waste Discharge Requirements for the Deer Creek Wastewater
24 Treatment Plant.

25 41. The Deer Creek Permit was approved pursuant to Section 402 of the Clean
26 Water Act, 33 U.S.C. § 1342, and the State Water Code.

27 42. Both the Clean Water Act and Porter-Cologne require permits to implement
28 water quality standards -- "state policies for water quality control" or "water quality

1 objectives” as water quality standards are sometimes referred to in California – that protect
2 all beneficial uses of a given water. (40 C.F.R. § 122.44; Water Code § 13263).

3 43. The federal anti-degradation requirements, 40 C.F.R. § 131.12, as
4 implemented by State Resolution No. 68-16, constitute a state policy for water quality
5 control, and are included in both the State Water Plan and the Basin Plan for the Sacramento
6 and San Joaquin Rivers. The state anti-degradation policy is an enforceable water quality
7 standard in the State of California.

8 44. When a proposed order contains a potential increase in pollutant loadings for a
9 given water body, application of the anti-degradation requirements is mandated pursuant to
10 the Regional Board’s obligations under state anti-degradation policy State Resolution No.
11 68-16, 40 C.F.R. § 131.12, and Porter-Cologne, Water Code § 13263.

12 45. Despite ample evidence of the Deer Creek WWTP’s toxic discharges in Table
13 F-8 of Order No. R5-2008-0173, the Regional Board completely failed to undertake any
14 kind of anti-degradation analysis whatsoever in adopting the Deer Creek Permit, thereby
15 prejudicially abusing its discretion.

16 46. The Deer Creek Permit’s *Findings* and *Fact Sheet* contain passing references
17 to the requirement to undertake an anti-degradation analysis; however, these references are
18 completely devoid of any analysis, merely stating, in wholly conclusory fashion, that “the
19 permitted discharge is consistent with” anti-degradation provisions in both state and federal
20 law. (*See*, Deer Creek Permit, at pp. 6 and F-39).

21 47. The Regional Board prejudicially abused its discretion when it concluded that
22 “[t]he impact on existing water quality will be insignificant.” (*See*, Deer Creek Permit,
23 Attachment F, Section IV.D.4, pp. F-39

24 48. The Regional Board further prejudicially abused its discretion in adopting the
25 Deer Creek Permit because the Deer Creek Permit does not comply with federal and state
26 anti-degradation policy.

1 49. The Regional Board further prejudicially abused its discretion by failing to
2 perform detailed socioeconomic and alternatives analyses, in violation of the anti-
3 degradation requirements.

4
5 **VII. SECOND CAUSE OF ACTION**
6 **(Violation of Permit Requirements under 40 C.F.R. § 122.44 and Water Code § 13377**
7 **for Failing to Include an Effluent Limitation Regarding Aluminum)**

8 50. Petitioner incorporates by reference the allegations in the paragraphs set forth
9 above.

10 51. 40 C.F.R. § 122.44(d) requires that permits include water quality-based water
11 quality criteria to protect the beneficial uses of the receiving water. Sampling and analysis
12 of effluent from the Deer Creek Plant has demonstrated the presence of aluminum in
13 concentrations as high as 150 µg/l. (*See*, Deer Creek Permit, Section E; pp. F-19 and 20).
14 Aluminum is identified as toxic to freshwater aquatic life. (U.S. EPA’s Ambient Water
15 Quality Criteria for Aluminum (Publication No. EPA 440/5-86-008, August 1988.)

16 52. Among the recognized beneficial uses of Deer Creek and waters downstream
17 from the plant is aquatic habitat.

18 53. The Basin Plan contains a narrative water quality objective for toxicity that
19 states in part that “[a]ll waters shall be maintained free of toxic substances in concentrations
20 that produce detrimental physiological responses in human, plant, animal, or aquatic life”
(narrative toxicity objective).

21 54. U.S. EPA has developed National Recommended Ambient Water Quality
22 Criteria for protection of freshwater aquatic life for aluminum. The recommended four-day
23 average (chronic) and one-hour average (acute) criteria for aluminum are 87 ug/l and 750
24 ug/l, respectively. (U.S. EPA’s Ambient Water Quality Criteria for the protection of
25 Freshwater Aquatic Life; also cited in the Deer Creek Permit, Section E, pps. F-19 and 20.)

26 55. The Regional Board prejudicially abused its discretion by failing to include an
27 effluent limitation for aluminum in accordance with 40 C.F.R. § 122.44 and California
28 Water Code § 13377.

VIII. THIRD CAUSE OF ACTION
(Violation of Permit Requirements under 40 C.F.R. § 122.44 and Water Code § 13377 For Failing To Include An Effluent Limitation Regarding Bis(2-ethylhexyl)phthalate)

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

57. Bis(2-ethylhexyl)phthalate is used in the formation of plastics and has been documented in the available literature to be present in plastic pipes, bottles, bags and widely distributed throughout the environment.

58. 40 C.F.R. § 122.44(d) requires that permits include water quality-based water quality criteria to protect the beneficial uses of the receiving water.

59. Sampling and analysis of effluent from the Deer Creek Plant has detected concentrations of bis(2-ethylhexyl)phthalate as high as 2.1 µg/l, while the applicable CTR Water Quality Standard is 1.8 µg/liter for this pollutant.

60. Evidence in the record demonstrates a reasonable potential that the Plant's effluent will exceed water quality standards for bis(2-ethylhexyl)phthalate in violation of Federal Regulations 40 CFR 122.44. However, Respondent in the Deer Creek Permit's *Fact Sheet* ignores the receiving water sampling data for bis(2-ethylhexyl)phthalate on the grounds that it is subject to error, but fails to reference any supporting documentation from the laboratory quality assurance/quality control ("QA/QC") documents to support this finding.

61. Respondent's wholesale disregard for the most basic scientific methods -- specifically sampling and laboratory QA/QC methodologies -- in disregarding data points that would lead to a conclusion that there is a reasonable potential for a pollutant to exceed water quality standards constitutes a prejudicial abuse of discretion.

62. The law places the onus on wastewater dischargers to conduct proper sampling and analysis; Respondent's election to disregard the sampling data provided -- without any permissible basis on the record -- simply rewards EID's purported sampling incompetence in this instance.

1 significant changes are made to the draft permit, shall be subject to a reopening of the public
2 comment period (40 C.F.R. § 124.14).

3 70. The Deer Creek Permit fails to include any statement of basis.

4 71. The Deer Creek Permit is at odds with, and not based upon, the administrative
5 record.

6 72. Moreover, significant changes to the proposed Permit for Deer Creek were
7 made after closure of the public comment period. These changes have not been made
8 available for public comment and a new draft permit has not been reissued. Specifically,
9 these changes included, but were not limited to: (a) a relaxation of the Effluent Limitation
10 for electrical conductivity (EC); (b) a modification of the Effluent Limitation for chronic
11 toxicity; (c) removal from the General Monitoring provisions on page E-1 of the requirement
12 that monitoring for pH and temperature be conducted by a certified laboratory; (d) alteration
13 of the identification of the turbidity monitoring location; (e) modification of the statement of
14 basis for the ammonia Effluent Limitation, see Fact Sheet, at F-21; (f) the addition of a major
15 policy discussion stating that the Regional Board considers an incremental increase of 500
16 umhos/cm over the public water supply to be the best practicable treatment and control of
17 the discharge for electrical conductivity (EC), see Fact Sheet, at F-29; and, (g) the significant
18 alteration of the statement of basis for removal of the Effluent Limitation for settleable solids
19 to include information not previously a part of the record, see Fact Sheet, at F-30.

20 73. The Deer Creek Permit was not subject to proper public notice requirements
21 because significant changes were made to the draft permit after closure of the public
22 comment period, and Respondent failed to reopen the public comment or re-issue the revised
23 draft for public comment as required under 40 C.F.R. § 124.14.

24
25 **XI. SIXTH CAUSE OF ACTION**
26 **(Violation of Permit Requirements under Water Code § 13176 For Failure To**
27 **Require That Monitoring For pH And Temperature Be Conducted By A**
28 **Properly Certified Laboratory)**

74. Petitioner incorporates by reference the allegations in the paragraphs set forth

1 above.

2 75. Water Code § 13176 requires that: (a) the analysis of any material required by
3 this division shall be performed by a laboratory that has accreditation or certification
4 pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division
5 101 of the Health and Safety Code; and (b) No person or public entity of the state shall
6 contract with a laboratory for environmental analyses for which the State Department of
7 Health Services requires accreditation or certification pursuant to this chapter, unless the
8 laboratory holds a valid certification or accreditation.

9 76. The Deer Creek Permit does not include the requirements of Water Code §
10 13176, with respect to monitoring for pH and temperature.

11 77. Respondent's failure to require that the Deer Creek Permit comply with the
12 requirements of Water Code § 13176 with respect to monitoring for pH and temperature
13 constitutes prejudicial abuse of discretion.

14 **XII. PRAYER FOR RELIEF**

15 78. WHEREFORE, Petitioner prays for judgment as follows:

16 79. That the court issue a writ of mandate against Respondent Regional Board
17 setting aside the Deer Creek Permit, Order No. R5-2008-0173, and ordering Respondent
18 Regional Board to re-issue the permit in conformance with all requirements of the Clean
19 Water Act, State Anti-degradation Policy, the Water Code, and the Basin Plan.

20 80. That the court award Plaintiff costs and expenses including reasonable attorneys'
21 fees according to law.

22 81. That the court award any such other and further relief as it deems appropriate.

23 Dated: August 27, 2009

Respectfully submitted,

24 LAW OFFICES OF ANDREW L. PACKARD
25 MICHAEL B. JACKSON, Attorney at Law
JACKSON & TUERCK

26 By: _____
27 Andrew L. Packard
28 Attorneys for Petitioner
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

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EXHIBIT LIST

- A. California Regional Water Quality Board, Central Valley Region, Order R5-2008-0173, NPDES No. CA0078662 (WASTE DISCHARGE REQUIREMENTS FOR EL DORADO IRRIGATION DISTRICT DEER CREEK WASTEWATER TREATMENT PLANT, EL DORADO COUNTY)
- B. Comments to Regional Board from Petitioner California Sportfishing Protection Alliance regarding Order R5-2008-0173, dated October 23, 2008.
- C. Petition of California Sportfishing Protection Alliance, to State Water Resources Control Board, requesting review of Order R5-2008-0173, dated January 2, 2009.
- D. Copy of letter to Attorney General Edmund G. Brown, Jr., which was accompanied by a copy of the above petition, pursuant to CCP § 388, dated August 28, 2009.
- E. Copy of letter to Pamela Creedon, Executive Director for the Central Valley Regional Water Quality Control Board, requesting preparation of the administrative record for this petition, dated August 28, 2009.

VERIFICATION

California Sportfishing Protection Alliance v. Central Valley Regional Water Quality Control Board, Sacramento County Superior Court, Case No. [Unassigned]

I am an attorney duly admitted and licensed to practice before all courts of this State. I have my professional office at 319 Pleasant Street, Petaluma, California 94952.

I am an attorney of record for California Sportfishing Protection Alliance (“CSPA”), Petitioner in this action. My California State Bar number is 168690.

Petitioner CSPA is a 501(c)(3) non-profit corporation residing in Stockton, California.

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

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

Executed on the 27th day of August, 2009 at Petaluma, California.

Andrew L. Packard

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E