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**ENDORSED
 FILED
 ALAMEDA COUNTY**

SEP 17 2009

CLERK OF THE SUPERIOR COURT
 By: ERICA BAKER

8 Attorneys for Petitioners
 9 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE and
 PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF ALAMEDA

1099074549

12 CALIFORNIA SPORTFISHING)
 PROTECTION ALLIANCE, a non-profit)
 13 corporation; PUBLIC EMPLOYEES FOR)
 ENVIRONMENTAL RESPONSIBILITY, a)
 14 non-profit corporation)

15 Petitioners,

16 v.

17 CALIFORNIA DEPARTMENT OF PARKS)
 AND RECREATION, an agency of the State)
 18 of California; DIVISION OF OFF-)
 HIGHWAY MOTOR VEHICLE)
 19 RECREATION, a division of the California)
 Department of Parks and Recreation; RUTH)
 20 COLEMAN, an individual in her official)
 capacity; DAPHNE GREEN, an individual in)
 21 her official capacity; ROBERT)
 WILLIAMSON, an individual in his official)
 22 capacity)

23 Respondents.

) Case No.:
) VERIFIED PETITION FOR ALTERNATIVE
) WRIT OF MANDATE, WRIT OF
) MANDATE, ORDER TO SHOW CAUSE,
) OR OTHER APPROPRIATE RELIEF FOR
) FIRST AND SECOND CAUSES OF
) ACTION; VERIFIED PETITION FOR WRIT
) OF MANDATE, OR OTHER
) APPROPRIATE RELIEF FOR THIRD AND
) FOURTH CAUSES OF ACTION;
) SUPPORTING EXHIBITS (VOLUME ONE
) OF FIVE – EXHIBITS A – B (part 1)
) [Code Civ. Proc. §§ 1085, 1087]
) Accompanying Documents: Dec'l of Steven
) Bond; Dec'l of Mark Connolly; Dec'l of Bill
) Jennings; Dec'l of Karen Schambach; Dec'l
) of Douglas J. Chermak; Ex Parte Application
) For Issuance of Alternative Writ of Mandate;
) Memorandum of Points and Authorities In
) Support Thereof; [Proposed] Order Directing
) Issuance of Alternative Writ of Mandate, and,
) Alternative Writ of Mandate.
)

1
2 The California Sportfishing Protection Alliance (“CSPA”) and Public Employees for
3 Environmental Responsibility (“PEER”) hereby petition this Court for an Alternative Writ of
4 Mandate pursuant to California Code of Civil Procedure (“CCP”) Sections 1085 and 1087
5 ordering the California Department of Parks and Recreation and its Division of Off-Highway
6 Motor Vehicle Recreation (collectively “DPR”) and Ruth Coleman, Daphne Green, and Robert
7 Williamson, each in his or her official capacity, (1) to immediately submit a report of waste
8 discharge (“RWD”) for water pollution discharges associated with the Carnegie State Vehicular
9 Recreation Area (“Carnegie SVRA”) to the Central Valley Regional Water Quality Control
10 Board (“Regional Board”) pursuant to the Porter-Cologne Water Quality Control Act (the
11 “Porter-Cologne Act” or “Porter-Cologne”), Water Code Section 13260 and (2) to immediately
12 suspend all off-highway motor vehicle activity at the Carnegie SVRA, including in Corral
13 Hollow Creek at the Carnegie SVRA, until Respondents have submitted an RWD and received
14 waste discharge requirements (“WDR”) or, to the extent it may be permissible, a conditioned
15 waiver of such WDRs from the Regional Board or, in the alternative, to show cause before this
16 Court why they should not do so and why an RWD is not mandated by the Water Code.

17 CSPA and PEER also petition this Court for a Writ of Mandate pursuant to CCP Section
18 1085 directing Respondents (1) to immediately complete reports monitoring the condition of
19 soils and wildlife habitat in the Carnegie SVRA pursuant to Public Resources Code (“PRC”)
20 Section 5090.35, and to temporarily close all portions of the Carnegie SVRA until they have
21 completed such monitoring, evaluated the results in light of the required soils and wildlife habitat
22 standards, and taken the appropriate actions to close and restore any noncompliant portions of
23 the Carnegie SVRA and (2) to comply with water quality objectives established pursuant to
24 Porter-Cologne.

25 INTRODUCTION

26 1. The Carnegie State Vehicular Recreation Area, situated between Tracy and
27 Livermore, California, alongside the meandering Corral Hollow Creek, stands in stark contrast to
28 the pristine rolling hills within which it is nestled. Observations of the facility reveal raw,
denuded hillsides marked by deep gullies and eroded trails. The scarring of these hillsides is

1 even more apparent and shocking as one drives past or enters the Carnegie SVRA, an experience
2 exacerbated by the deafening roars of myriad off-highway motor vehicles that traverse in every
3 direction across the landscape, particularly on busy weekend days. The SVRA's hillsides
4 adjacent to the creek have been ripped up and left exposed from years of heavy off-highway
5 motor vehicle use.

6 2. Off-highway motor vehicle usage disturbs loose soils and sediment throughout the
7 Carnegie SVRA – heavily-used areas of which already are bereft of vegetation – which
8 ultimately finds its way through numerous channels into Corral Hollow Creek. During rain
9 events, the damaged hillsides bleed sediment from large gullies and eroded areas. Respondent
10 DPR's reckless disregard for the water quality of Corral Hollow Creek is apparent as it stands
11 idly by while vehicles purposefully plunge in and out of the creek for sport, disturbing sediment
12 along its banks and directly within its streambed. No obvious signs or barriers prevent riders
13 from driving in the creek, and at best, there appears to be minimal protections in place at the
14 SVRA to reduce sediment and pollutant loading to the creek.

15 3. Respondents have discharged and continue to discharge wastes to Corral Hollow
16 Creek without having submitted an RWD to the Regional Board. This omission violates their
17 nondiscretionary duty to submit an RWD pursuant to Porter-Cologne, Water Code §§ 13000-
18 13953.

19 4. Respondents' failure to protect Corral Hollow Creek has resulted in and continues
20 to result in the violation of water quality objectives that apply to Corral Hollow Creek.
21 Accordingly, Respondents have violated their nondiscretionary duty to comply with state policy
22 for water quality control under the Porter-Cologne Act.

23 5. Pursuant to the Off-Highway Motor Vehicle Recreation Act of 2003 (the
24 "OHMVR Act"), PRC §§ 5090.01-5090.70, Respondents have failed and continue to fail to
25 annually monitor the condition of soils and wildlife habitat in the Carnegie SVRA, and to shut
26 down noncompliant portions of the Carnegie SVRA if the soil conservation standards, habitat
27 protection plans, or habitat protection program are not being met. Consequently, Respondents
28

1 have been and, unless a writ is issued by this Court, will continue to operate the Carnegie SVRA
2 in violation of their nondiscretionary duties under the OHMVR Act.

3 6. Respondents' compliance with the Porter-Cologne Act and the OHMVR Act is
4 essential to eliminate the ongoing degradation of Corral Hollow Creek and in assuring that the
5 legal protections provided to ensure water quality, the protection of public safety, the appropriate
6 utilization of lands, and the conservation of land resources in California are realized as soon as
7 possible.

8 **PETITION FOR ALTERNATIVE WRIT, WRIT OF MANDATE, OR OTHER**
9 **APPROPRIATE RELIEF**

10 **Authenticity of Exhibits**

11 7. All exhibits accompanying this petition are true copies of original documents on
12 file with Respondents or the Regional Board. Each of these documents was obtained by
13 Petitioners from Respondent DPR or from the Regional Board. The exhibits are incorporated
14 herein by reference as though fully set forth in this petition.

15 **Beneficial Interest of Petitioner; Capacity of Respondent**

16 8. Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE is a non-
17 profit public benefit corporation organized under the laws of the State of California with its main
18 office in Stockton, California. CSPA has approximately 2,000 members who live, recreate and
19 work in and around waters of the State of California, including the Corral Hollow Creek, the San
20 Joaquin River, and the Sacramento-San Joaquin River Delta ("Delta"). CSPA is dedicated to the
21 preservation, protection, and defense of the environment, the wildlife and the natural resources of
22 all waters of California. To further these goals, CSPA actively seeks federal and state agency
23 implementation of Porter-Cologne and other laws and, where necessary, directly initiates
24 enforcement actions on behalf of itself and its members.

25 9. Members of CSPA reside in lands within the area of the Sacramento-San Joaquin
26 Delta. They use and enjoy Corral Hollow Creek, the San Joaquin River, and the Delta for
27 recreation and other activities. Members of CSPA frequently travel on Corral Hollow Road and
28 observe the massive erosion and scarring of the land at the Carnegie SVRA. When walking or

1 traveling past the Carnegie SVRA, members of CSPA frequently observe turbid and polluted
2 water within Corral Hollow Creek as the creek flows along the length of the Carnegie SVRA.
3 Members of CSPA use those areas to birdwatch, view wildlife and engage in scientific study
4 including monitoring activities. CSPA's members also fish for salmon and other types of fish,
5 whose numbers and vitality depend on an intact and healthy ecosystem in the San Joaquin River,
6 the Delta and their tributaries. Where elements of that ecosystem are reduced or eliminated,
7 CSPA's members' recreational uses and aesthetic enjoyment of those areas are reduced.

8 10. CSPA and its members host meetings and maintain a web site updating its
9 members and the public on water quality concerns in California and opportunities to address
10 those concerns before regulatory agencies, including the Regional Board. CSPA and its
11 members regularly appear before the Regional Board to advocate for effective pollution controls
12 to address water pollution issues throughout the Central Valley, including pollution releases to
13 the San Joaquin River and its tributaries. In order for CSPA to carry out its mission to inform its
14 members and the public about water quality concerns and to participate effectively before the
15 Regional Board, CSPA depends upon the timely submittal of required monitoring reports and
16 reports of waste discharge to the Regional Board. Where a pollution discharger fails to file
17 requisite reports, CSPA is denied legally mandated information as well as a procedure before the
18 Regional Board to address the relevant pollution discharges. Thus, the interests of CSPA's
19 members have been, are being, and will continue to be adversely affected by Respondents'
20 failure to comply with Porter-Cologne and the OHMVR Act. The relief sought herein will
21 redress the harms to CSPA caused by Respondents' failure to comply with Porter-Cologne and the
22 OHMVR Act.

23 11. Petitioner PUBLIC EMPLOYEES FOR ENVIRONMENTAL
24 RESPONSIBILITY ("PEER") is a national, non-profit corporation based in Washington, D.C.
25 with chapters throughout the United States, including California. California PEER has a field
26 office in Georgetown, California. PEER represents current and former federal and state
27 employees of land management, wildlife protection, and pollution control agencies who are
28 frustrated by the failure of governmental agencies to enforce or faithfully implement the

1 environmental laws entrusted to them by Congress. The ability of PEER's members to
2 independently critique agency decisions frequently is compromised by conflicts between their
3 duties as employees of a federal or state agency to uphold the law and the risk of disciplinary
4 action for insubordination. Consequently, PEER's members rely on PEER to criticize agency
5 action, including the use of litigation, on their behalf.

6 12. Staff and Members of PEER reside in lands within the area of the Sacramento-
7 San Joaquin Delta. They use and enjoy Corral Hollow Creek, the San Joaquin River, and the
8 Delta for observation, research, aesthetic enjoyment, and other recreational, scientific, and
9 educational activities. PEER's California Director has visited Carnegie SVRA on several
10 occasions and observed sediment coming off trails and piled next to sediment ponds, from which
11 it had been removed from the latter and left to sit. Staff and members of PEER frequently travel
12 on Corral Hollow Road and observe the massive erosion and scarring of the land at the Carnegie
13 SVRA. When walking or traveling past the Carnegie SVRA, staff and members of PEER
14 frequently observe turbid and polluted water within Corral Hollow Creek as the creek flows
15 through the Carnegie SVRA. PEER's members also fish for salmon and other types of fish,
16 whose numbers and vitality depend on an intact and healthy ecosystem in the San Joaquin River,
17 the Delta and their tributaries. Where elements of that ecosystem are reduced or eliminated,
18 PEER's members' recreational uses and aesthetic enjoyment of those areas are reduced. PEER
19 and its members submitted comments on the Draft General Plan Amendment for the Carnegie
20 SVRA to California State Parks Off-Highway Motor Vehicle Recreation Division. PEER staff
21 and members regularly submit testimony and have appeared before the Regional Board to
22 advocate for effective pollution controls to address water pollution issues throughout the Central
23 Valley, including pollution releases to the San Joaquin River and its tributaries. In order for
24 PEER to carry out its mission to represent the interests of its members to ensure clean water for
25 fish, wildlife, recreation and consumption, PEER depends upon the timely submittal of required
26 monitoring reports and reports of waste discharge to the Regional Board. Where a pollution
27 discharger fails to file requisite reports, PEER is denied legally mandated information as well as
28 a procedure before the Regional Board to address the relevant pollution discharges. Thus, the

1 interests of PEER's members have been, are being, and will continue to be adversely affected by
2 Respondents' failure to comply with Porter-Cologne and the OHMVR Act. The relief sought
3 herein will redress the harms to PEER caused by Respondents' failure to comply with Porter-
4 Cologne and the OHMVR Act.

5 13. Respondent CALIFORNIA DEPARTMENT OF PARKS AND RECREATION is
6 now, and at all times mentioned in this petition has been, a state agency under the laws of the
7 State of California.

8 14. Respondent Ruth Coleman is the Director of the DPR. Respondent Daphne
9 Green is the Deputy Director of the Division of Off-Highway Motor Vehicle Recreation (the
10 "OHMVR Division" or "Division"). Respondent Bob Williamson is the District Superintendent
11 of the Twin Cities District, in which Carnegie SVRA is situated. Each is named as a Respondent
12 in her/his official capacity. Each of these persons is responsible for the operation of the Carnegie
13 SVRA and for assuring that those facilities and operations comply with the State of California's
14 environmental laws, including the Porter-Cologne Act and the OHMVR Act.

15 **Jurisdiction and Venue**

16 15. This court has jurisdiction pursuant to Code of Civil Procedure Section 1085.
17 Section 1085(a) provides that "[a] writ of mandate may be issued by any court to any inferior
18 tribunal, corporation, board, or person, to compel the performance of an act which the law
19 specially enjoins, as a duty resulting from an office, trust, or station. . . ." Venue is proper in this
20 court pursuant to Code of Civil Procedure Section 393 because the facility at issue has its
21 headquarters in Alameda County and Petitioners' cause, or some part of that cause, arises in that
22 county.

23 16. CSPA and PEER have exhausted all administrative remedies that may be
24 available to them. There is no discernable administrative procedure within DPR which Petitioner
25 could employ to remedy the violations encompassed by this Petition. In lieu of any available
26 administrative procedure, on September 9, 2009, CSPA and PEER, via certified mail, return
27 receipt requested, sent DPR, Ruth Coleman, Daphne Green, and Bob Williamson a letter
28 requesting that DPR and those officials comply with Porter-Cologne by filing an RWD for the

1 Carnegie SVRA and comply with water quality objectives and to comply with the OHMVR Act
2 by completing monitoring of the condition of soils and wildlife habitat and taken the appropriate
3 actions in light of such monitoring. Exhibit A (letter from Douglas J. Chermak to Ruth Coleman
4 et al (September 9, 2009)). In the letter, CSPA and PEER also notified DPR and its managing
5 staff of CSPA and PEER's intent to file a petition for writ of mandate to enforce the
6 requirements of Porter-Cologne and the OHMVR Act should DPR and its managing staff
7 continue to violate those Acts.

8 17. This petition is timely filed within the four-year statute of limitations pursuant to
9 CCP Sections 1109 and 343.

10 **Statutory Background**

11 **The Porter-Cologne Water Quality Control Act**

12 18. The Porter-Cologne Water Quality Control Act, Water Code §§ 13000-13953.4, is
13 the primary state law regulating water quality in California.

14 19. Porter-Cologne declares "that the people of the state have a primary interest in the
15 conservation, control, and utilization of the water resources of the state, and that the quality of all
16 the waters of the state shall be protected for use and enjoyment by the people of the state."

17 Water Code § 13000. Porter-Cologne further declares that "activities and factors which may
18 affect the quality of the waters of the state shall be regulated to attain the highest water quality
19 which is reasonable, considering all demands being made and to be made on those waters and the
20 total values involved, beneficial and detrimental, economic and social, tangible and intangible."

21 *Id.*

22 20. Porter-Cologne places "primary responsibility for the coordination and control of
23 water quality" on the State Water Resources Control Board ("State Board") and nine regional
24 water quality control boards. *Id.*, §§ 13001, 13100, 13200.

25 21. Porter-Cologne defines waste as "sewage and any and all other waste substances,
26 liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal
27 origin, or from any producing, manufacturing, or processing operation, including waste placed
28

1 within containers of whatever nature prior to, and for purposes of, disposal.” *Id.*, § 13050(d).
2 Waste includes sediment, turbidity, and fluids associated with motorized vehicles.

3 22. Porter-Cologne defines waters of the state as “any surface water or groundwater,
4 including saline waters, within the boundaries of the state.” *Id.*, § 13050(e). Corral Hollow
5 Creek is a water of the state.

6 23. Porter-Cologne defines person to include “any city, county, district, the state, and
7 the United States, to the extent authorized by federal law.” *Id.*, § 13050(c).

8 24. Porter-Cologne requires persons discharging waste within any region that could
9 affect the quality of waters of the state to submit RWDs. Water Code § 13260. The RWDs must
10 contain sufficient information for the Regional Boards or the State Board to prepare permits
11 known as “waste discharge requirements” (“WDRs”) that assure that the water quality and
12 beneficial uses of the State’s waters are protected from harmful discharges. Water Code §§
13 13260, 13263.

14 25. For discharges from non-point sources to navigable waters, the implementing
15 regulations for Porter-Cologne provide that the RWD is deemed filed when the discharger has
16 submitted all the information required by the regional board and paid the full fee that is due. Cal.
17 Code Regs., tit. 23, § 2206. They also provide that “[s]eparate reports shall be filed for
18 discharges to different disposal areas. One report may include two or more discharges by the
19 same person to the same disposal area unless in the judgment of the regional board separate
20 reports should be filed.” *Id.*, § 2207.

21 26. For discharges from point sources to navigable waters, the regulations provide
22 that “[e]ach report of waste discharge...shall be filed and processed in compliance with the
23 applicable federal regulations governing the NPDES permit program promulgated by EPA.” *Id.*,
24 § 2235.1. They further provide that “[w]aste discharge requirements...shall be issued and
25 administered in accordance with the currently applicable federal regulations for the [NPDES]
26 program.” *Id.*, § 2235.2.

27 27. Porter-Cologne prohibits persons from initiating any new discharge of waste or
28 making any material changes in any discharge prior to the filing of an RWD as required by

1 Water Code Section 13260. Water Code § 13264(a). In addition, prior to discharging, the waste
2 discharger must either do one of the following: receive a WDR from a Regional Board; wait 140
3 days after submitting an RWD if the waste to be discharged does not threaten to cause a
4 condition of pollution or nuisance (if the project is not subject to the California Environmental
5 Quality Act [“CEQA”] [Division 13 (commencing with Section 21000) of the Public Resources
6 Code] or has met applicable CEQA requirements); or, receive a waiver pursuant to Water Code
7 Section 13269. *Id.*

8 28. Respondents must comply with Porter-Cologne, and submit an RWD and obtain a
9 WDR or receive a waiver prior to discharging any waste. Respondents have a clear, present and
10 ministerial duty to prepare and file a RWD with the Regional Board. Respondents also have a
11 clear, present and ministerial duty to cease discharging unauthorized waste pursuant to Porter-
12 Cologne. “A ministerial act is an act that a public officer is required to perform in a prescribed
13 manner in obedience to the mandate of legal authority and without regard to his own judgment or
14 opinion concerning such act’s propriety or impropriety, when a given state of facts exists.”
15 *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916
16 (*quoting Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501). Ministerial duties may be enforced
17 by writ of mandate. *Id.*; *San Elijo Ranch, Inc. v. San Diego*, 65 Cal. App. 4th 608, 612 (1998).

18 29. Respondents as well as other agencies have documented that the Carnegie SVRA
19 discharges sediment-laden water runoff to Corral Hollow Creek. Consequently, Respondents
20 have been and will continue to operate the Carnegie SVRA in violation of their nondiscretionary
21 duties to submit a RWD to the Regional Board under Porter-Cologne and to cease discharging
22 pending the Regional Board’s final action on that RWD.

23 30. Porter-Cologne requires that “State offices, departments, and boards, in carrying
24 out activities which affect water quality, shall comply with state policy for water quality control
25 unless otherwise directed or authorized by statute. . . .” Water Code § 13146. State policy for
26 water quality controls includes, among other components, water quality objectives established in
27 the Regional Board’s “Water Quality Control Plan (Basin Plan) for the California Regional
28 Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San

1 Joaquin River Basin” generally referred to as the Basin Plan. See Water Code § 13141. The
2 Basin Plan describes water quality objectives for Corral Hollow Creek, the San Joaquin River,
3 and the Sacramento-San Joaquin Delta.

4 31. The Basin Plan provides that “[w]aters shall not contain chemical constituents in
5 concentrations that adversely affect beneficial uses.”

6 32. The Basin Plan includes a narrative toxicity standard which states that “[a]ll
7 waters shall be maintained free of toxic substances in concentrations that produce detrimental
8 physiological responses in human, plant, animal, or aquatic life.”

9 33. The Basin Plan provides that “[w]aters shall be free of changes in turbidity that
10 cause nuisance or adversely affect beneficial uses.”

11 34. The Basin Plan provides that “[w]aters shall not contain suspended material in
12 concentrations that cause nuisance or adversely affect beneficial uses.”

13 35. The Basin Plan provides that “[t]he suspended sediment load and suspended
14 sediment discharge rate of surface waters shall not be altered in such a manner as to cause
15 nuisance or adversely affect beneficial uses.”

16 36. The Basin Plan provides that “[w]aters shall be free of discoloration that causes
17 nuisance or adversely affect beneficial uses.”

18 37. The Basin Plan includes a numeric water quality objective for iron of 0.3
19 milligrams per liter (“mg/L”).

20 38. The Basin Plan includes a numeric water quality objective for zinc of 0.1 mg/L.

21 39. The Basin Plan includes a numeric water quality objective for copper of 0.01
22 mg/L.

23 40. The Basin Plan includes a numeric water quality objective for aluminum of 0.2
24 mg/L.

25 41. Respondents have a nondiscretionary duty to assure that their operation of the
26 Carnegie SVRA does not result in violations of water quality objectives. Respondents’
27 discharges of sediment have resulted in regular violations of water quality objectives established
28 for Corral Hollow Creek in the Basin Plan. Consequently, Respondents have been and will

1 continue to operate the Carnegie SVRA in violation of their nondiscretionary duty to comply
2 with state policy for water quality control under Porter-Cologne.

3 **The Off-Highway Motor Vehicle Recreation Act**

4 42. The Off-Highway Motor Vehicle Recreation Act, PRC §§ 5090.01-5090.70, is the
5 primary state law regulating off-highway motor vehicles, the Division of Off-Highway Motor
6 Vehicle Recreation (the “OHMVR Division” or “Division”), and the state vehicular recreation
7 areas. Originally adopted in 1988, through the OHMVR Act the Legislature declared “that
8 effectively managed areas and adequate facilities for the use of off-highway motor vehicles and
9 conservation and enforcement are essential for ecologically balanced recreation.” PRC §
10 5090.02(b). The Act provides that “[w]hen areas or trails or portions thereof cannot be
11 maintained to appropriate established standards for sustained long-term use, they should be
12 closed to use and repaired, to prevent accelerated erosion. Those areas should remain closed
13 until they can be managed within the soil conservation standard or should be closed and
14 restored.” *Id.*, § 5090.02(c)(4).

15 43. The OHMVR Act created the OHMVR Division to administer many aspects of
16 the operation of the state vehicular recreation areas and the Off-Highway Motor Vehicle
17 Recreation Program. *Id.*, §§ 5090.30 – 5090.38.

18 44. With respect to the OHMVR Division’s role in managing the state vehicular
19 recreation areas, the OHMVR Act states that “[t]he protection of public safety, the appropriate
20 utilization of lands, and the conservation of land resources are of the highest priority in the
21 management of the state vehicular recreation areas; and, accordingly, the division shall promptly
22 repair and continuously maintain areas and trails, anticipate and prevent accelerated and
23 unnatural erosion, and restore lands damaged by erosion to the extent possible.” PRC §
24 5090.35(a).

25 45. PRC Section 5090.35 sets forth the affirmative duties required by the OHMVR
26 Division with respect to monitoring of soil conditions and wildlife habitat in each state vehicular
27 recreation area.

1 46. Soils are supposed to be monitored in accordance with established soil
2 conservation guidelines. The OHVMR Division was required to update the 1991 Soil
3 Conservation Guidelines and Standards by March 1, 2006, and those 1991 guidelines were to
4 remain in place until they were updated. *Id.*, § 5090.35(b)(1). In early 2009, DPR released the
5 2008 Soil Conservation Standard and Guidelines. *See* [http://ohv.parks.ca.gov/pages/1140/files/](http://ohv.parks.ca.gov/pages/1140/files/2008%20soil%20cons.%20standard%20and%20guidelines.pdf)
6 [2008%20soil%20cons.%20standard%20and%20guidelines.pdf](http://ohv.parks.ca.gov/pages/1140/files/2008%20soil%20cons.%20standard%20and%20guidelines.pdf).

7 47. With respect to habitat monitoring, the OHMVR Division was required to “make
8 an inventory of wildlife populations and their habitats in each state vehicular recreation area and
9 shall prepare a wildlife habitat protection program to sustain a viable species composition
10 specific to each state vehicular recreation area by July 1, 1989.” PRC § 5090.35(c)(1).

11 48. The OHMVR Division is required to “monitor the condition of soils and wildlife
12 habitat in each state vehicular recreation area ***each year*** in order to determine whether the soil
13 conservation standards and habitat protection programs are being met.” *Id.*, § 5090.35(d)
14 (emphasis added).

15 49. If the OHMVR Division determines that the soil conservation standards and
16 habitat protection plans are not being met in any portion of any state vehicular recreation area,
17 the Division “shall temporarily close the noncompliant portion to repair and prevent accelerated
18 erosion, until the soil conservation standards are met.” *Id.*, § 5090.35(b)(2). If the Division
19 determines that the soil conservation standards cannot be met, the Division ***must close and***
20 ***restore*** the noncompliant portion pursuant to Public Resources Code § 5090.11. *Id.*, §
21 5090.35(b)(3) (emphasis added). Section 5090.11 states that restoration “means, upon closure of
22 the unit or any portion thereof, the restoration of land to the contours, the plant communities, and
23 the plant covers comparable to those on surrounding lands or at least those that existed prior to
24 off-highway motor vehicle use.”

25 50. “If the OHMVR Division determines that the habitat protection program is not
26 being met in any portion of any state vehicular recreation area, the Division shall close the
27 noncompliant portion temporarily until the habitat protection program is met.” *Id.*, §
28 5090.35(c)(2). “If the Division determines that the habitat protection program cannot be met, the

1 Division must close and restore the noncompliant portion pursuant to Public Resources Code §
2 5090.11.” *Id.*, § 5090.35(c)(3) (emphasis added).

3 51. Respondents must comply with the OHMVR Act by conducting monitoring of
4 soil conditions and wildlife habitat at the Carnegie SVRA and by taking appropriate steps in light
5 of such monitoring to close and restore portions that are not in compliance. Respondents have a
6 clear, present and ministerial duty to conduct such monitoring in order to prevent accelerated and
7 unnatural erosion, restore lands damaged by erosion to the extent possible, and ensure the
8 conservation of land resources. Consequently, Respondents have been and, unless a writ is
9 issued by this Court, will continue to operate the Carnegie SVRA in violation of their
10 nondiscretionary duties under the OHMVR Act.

11 **Factual Background**

12 **A. Operation of Carnegie SVRA Results in Waste Discharge to Corral Hollow 13 Creek**

14 52. Respondent DPR operates the Carnegie SVRA through its Off-Highway Motor
15 Vehicle Recreation Division. Corral Hollow Watershed Assessment, attached hereto as Exhibit
16 B (“Watershed Assessment”). The Carnegie SVRA is a unit of the California Park System that
17 provides off-highway vehicular recreational opportunities to the general public. Watershed
18 Assessment, 1. The Carnegie SVRA abuts Corral Hollow Creek, approximately 12 miles
19 southwest of Tracy, California, and approximately 11 miles southeast of Livermore, California.
20 *Id.* at 4. There are over 1500 acres of off-road vehicle riding available to the general public at
21 the Carnegie SVRA. *Id.* at 2. Recently, the State increased its ownership and jurisdiction in the
22 area to a total of 5,033 acres by acquiring an additional 3,478 acres to the west of the existing
23 Carnegie SVRA. *Id.* at 4. The new properties include both the Tesla property, a historic
24 property associated with the Tesla Mine site, and the Alameda property, a large grazing area. *Id.*

25 53. In 2004, the OHMVR Division conducted an assessment of the Corral Hollow
26 Watershed. *Id.* at 1. The goal of the Corral Hollow Watershed Assessment was to determine the
27 impacts of off-highway motor vehicle rider activities on the Corral Hollow Creek watershed, the
28 impacts from historical mining and grazing activities, and to consider potential impacts with
expanding the Carnegie SVRA into the Tesla and Alameda properties. *Id.* at 4.

1 54. The Corral Hollow watershed is dendritic, with “small headwater tributaries
2 converging in the upper portion of the watershed to form the main stem of Corral Hollow
3 Creek.” *Id.* at 1. The watershed includes numerous unique and diverse habitat types that host a
4 variety of common and special-status mammals, birds, amphibians, reptiles, and insects. *Id.*
5 Rainfall within the watershed generally occurs as low intensity, long duration events. *Id.*

6 55. The Watershed Assessment describes how off-highway motor vehicle use has
7 adversely affected the health of the watershed. It notes that “[i]ncreased sediment load and
8 runoff from unstabilized parking areas, roads, and trails have led to the degradation of water
9 quality in Corral Hollow Creek. Volunteer trails and improperly constructed/maintained roads
10 and trails have led to drainage alterations and gully formation.” *Id.* at 2.

11 56. In the open riding areas in Carnegie SVRA, “riders are not limited to the trails and
12 can ride anywhere within the open riding boundary, including Corral Hollow Creek.” *Id.* at 36.
13 Indeed, the Watershed Assessment observes that “the park has no restrictions to prohibit riders
14 from driving through the riparian corridor and channel of Corral Hollow Creek.” *Id.* at 2. The
15 Watershed Assessment contains pictures of off-highway motor vehicle riders in the middle of
16 Corral Hollow Creek. *Id.* at 36. (Figure 6-4). This off-highway motor vehicle use has led to the
17 degradation of water quality, due to increased sediment load and runoff from unstabilized
18 parking areas, roads, and trails. *Id.* at 140. The lack of restrictions to prohibit various off-
19 highway use through the riparian corridor and channel of Corral Hollow Creek “has a direct and
20 immediate impact on stream bank stability and water quality, especially during wet-weather
21 events.” *Id.*

22 57. The Watershed Assessment reports on a 2-year water quality monitoring program
23 to categorize and measure the constituents that were present in Corral Hollow Creek and its
24 tributaries. *Id.* at 146. The results from this program indicate that pollutant concentrations
25 increased, particularly for total suspended solids, as the creek flows past the section of Carnegie
26 SVRA where off-highway motor vehicle use occurs. *Id.* at 2. Two of the three water sampling
27 stations that exhibited higher pollutant concentrations than the other nine stations were from
28 areas that drain active parts of the SVRA. *Id.* at 164. The Watershed Assessment concluded that

1 “[t]he primary source of [total suspended solids] to the creek were attributed to the extensive
2 erosion caused by off-road activities in Carnegie SVRA, historical mining activities in Tesla, and
3 off-site flows from Baker’s Ravine.” *Id.* at p.2.

4 58. Numerous deficiencies within the extensive system of access roads, trails, stream
5 crossings, and gullies – all of which are associated with off-highway motor vehicle use within
6 the Carnegie SVRA – are discharging large amounts of sediment to Corral Hollow Creek. A
7 field inventory of these features revealed that most of the trails had lost a significant amount of
8 sediment due to erosion. *Id.* at 2. These improperly designed roads and trails “can significantly
9 contribute to erosion and sediment mobilization by altering the natural drainage patterns of the
10 watershed.” *Id.* at 119. In fact, as the Watershed Assessment recognizes, “[i]n the Corral
11 Hollow watershed, the primary pollutant is sediment and the ultimate delivery point is Corral
12 Hollow Creek.” *Id.*

13 59. Observations have confirmed that all of the access roads and trails at Carnegie
14 SVRA except one have lost a significant amount of sediment due to erosion. *Id.* at 122. These
15 “[e]rosion impacts are compounded when trails also exhibit[] a high delivery potential since the
16 eroded material is likely transported to Corral Hollow Creek.” *Id.*

17 60. Stream crossings are the points on trails or roadways that intersect natural
18 drainage paths. *Id.* at 123. The formation of inboard ditches or rills has caused many stream
19 crossings within Carnegie SVRA to divert away from their natural flow paths. *Id.* at 2.
20 “Improperly designed crossings can damage trails and divert runoff to sensitive areas of the
21 watershed that can easily be eroded.” *Id.* at 123. Over half of the stream crossings inventoried
22 in the Watershed Assessment were diverted from their natural flow paths, which serves to
23 concentrate runoff and can contribute to erosion. *Id.* at 123-124.

24 61. Improperly designed trails and stream crossings have lead to the creation of
25 erosive gullies throughout Carnegie SVRA. *Id.* at 125. Within a particular watershed, gullies
26 can contribute “massive amounts of sediment to the receiving waters.” *Id.* Nearly all of the
27 inventoried gullies in Carnegie SVRA are expected to continue to erode in the future. *Id.* at 126.

1 62. Many of the sediment basins situated in the Carnegie SVRA are ineffective at
2 reducing sediment loads into Corral Hollow Creek. For example, Tyson’s Pond is not designed
3 to remove the large amount of sediment from the entire Tyson’s Pond drainage area and has a
4 reduced ability to allow settlement of fine particles and reduce turbidity before water is
5 discharged. *Id.* at 131. Flows from Carrol Canyon Pond are contributing erosion to an earthen
6 drainage channel that discharges to Corral Hollow Creek. *Id.* at 132. Water from the sediment-
7 laden and eroding Kiln Canyon Pond flows through a path that discharges to Corral Hollow
8 Creek. *Id.* at 133.

9 63. Personal observations by Petitioners confirm the reports of sediment discharges to
10 Corral Hollow Creek from off-highway motor vehicle riding as described in the Watershed
11 Assessment. On busy weekend days, Petitioners have observed numerous riders in various types
12 of off-highway motor vehicles riding across and down Corral Hollow Creek in many locations
13 throughout the Carnegie SVRA. Declaration of Steven Bond in Support of Ex Parte Application
14 for Alternative Writ of Mandate (“Bond Dec’l”), ¶¶ 2-9 and accompanying exhibits; Declaration
15 of Mark Connolly in Support of Ex Parte Application for Alternative Writ of Mandate
16 (“Connolly Dec’l”) at ¶¶ 4-8. Petitioners observed mud and sediment entering the creek flowing
17 from within Carnegie SVRA into Corral Hollow Creek. *Id.* Petitioners have observed sediments
18 within the creek being disturbed as off-highway motor vehicles continually rode through Corral
19 Hollow Creek. Bond Dec’l at ¶ 9 and Exhibit 6; Connolly Dec’l at ¶ 5. Despite the presence of
20 park rangers, Petitioners did not see any effort to prevent riders from entering the creek nor any
21 signs warning riders to refrain from doing so. *Id.* Petitioners also observed that the water in the
22 creek was clear at the beginning of the park where it flows into the riding area and had turned
23 brown and opaque as it exited the park. Bond Dec’l at ¶¶ 2-9; Connolly Dec’l at ¶¶ 6-7. Upon
24 returning to the Carnegie SVRA the weekdays following the busy weekend days, when little to
25 no off-highway motor vehicle riding was occurring and when it was not raining, Petitioners
26 observed less turbid water in Corral Hollow Creek as it exited the park. Bond Dec’l at ¶ 8;
27 Connolly Dec’l at ¶ 7.

1 64. Water sampling of Corral Hollow Creek during weekend days of significant
2 activity at the park confirms mass pollutant discharges to Corral Hollow Creek as the creek flows
3 through the riding area of Carnegie SVRA. Water measured downstream of the riding area
4 displayed significant increases in concentrations of total suspended solids, aluminum, copper,
5 iron, lead, and zinc as compared with samples taken upstream of the riding area. Declaration of
6 Steve Bond (Bond Dec'1) at ¶¶ 3-8. The sampling shows that the waste discharges from the
7 Carnegie SVRA are in violation of the Basin Plan water quality objectives because they alter the
8 turbidity, contain suspended materials, load and discharge sediment, and result in discoloration
9 that causes nuisance and adversely affects beneficial uses. *Id.* The discharges also contain
10 chemical constituents that adversely affect beneficial uses and contain toxic substances in
11 concentrations that produce detrimental physiological responses in human, plant, animal, or
12 aquatic life. *Id.* Moreover, the amounts of iron, zinc, copper, and aluminum in the discharges
13 exceed the objectives set forth in the Basin Plan. *Id.*

14 **B. Respondents Have Not Submitted An RWD Nor Obtained A WDR Or WDR**
15 **Waiver For Their Discharges Of Pollutants To Waters Of The State Of**
16 **California From Off-Highway Motor Vehicle Activity At The Carnegie**
17 **SVRA**

18 65. Review of Respondents' agency records pertaining to any submission of RWDs,
19 any WDRs, any NPDES permits, any certifications, any applications, water quality studies or
20 other documents pertaining to water quality, flooding, or erosion at the Carnegie SVRA
21 demonstrates that Respondents have never submitted any RWDs for their discharges of sediment
22 and other pollutants into Corral Hollow Creek at the Carnegie SVRA. Respondents' operation of
23 the Carnegie SVRA has degraded and continues to degrade the water quality of Corral Hollow
24 Creek, without obtaining a WDR or conditioned waiver from the Regional Board, in violation of
25 the Porter-Cologne Act.

26 66. On December 26, 2007, Petitioners sent a Public Records Act request to DPR
27 pursuant to Cal. Govt. Code section 6250, *et seq.*, requesting, *inter alia*, all records in DPR's
28 possession pertaining to sediment loading, erosion and erosion control, and water quality at the
Carnegie SVRA. Exhibit C (letter from Douglas J. Chermak, CSPA and PEER, to Legal Office,
DPR (Dec. 26, 2007)).

1 67. On January 22, 2008, DPR responded in a letter to Douglas Chermak, counsel for
2 Petitioners, and listed numerous records responsive to Petitioners' request. Exhibit D (letter
3 from Leilani Yang, Staff Counsel, DPR, to Douglas J. Chermak (Jan. 22, 2008) ("Yang Letter")).

4 68. None of the documents identified by Respondent DPR in response to Petitioners'
5 Public Records Act request of December 26, 2007, whether considered individually or
6 cumulatively, demonstrates that DPR has ever filed an RWD for its waste discharges to Corral
7 Hollow Creek from ongoing off-highway motor vehicle activity in the Carnegie SVRA. None of
8 the documents in the Yang Letter itemizing DPR's responsive documents is an RWD or WDR.
9 Exhibit D. Paragraphs 69 through 97 below summarize some of the documents pertaining to
10 water quality that were provided that are not RWDs.

11 69. The Watershed Assessment contains numerous examples of discharges to Corral
12 Hollow Creek from off-highway motor vehicle activity in Carnegie SVRA, including improperly
13 designed roads and trails, as described above in Section A. However, nothing in the Watershed
14 Assessment describes or references any RWDs for these discharges. In fact, while the section of
15 the Watershed Assessment that describes the applicable federal, state, and local regulations
16 developed to protect, maintain, and improve the quality of the environment generally describes
17 the Porter-Cologne Act and how it regulates discharges of waste to surface and groundwater, it
18 does not identify any RWDs prepared by Respondents, WDRs or conditional waivers controlling
19 sediment and other pollutant discharges at Carnegie SVRA or Corral Hollow Creek. Watershed
20 Assessment at 8-10.

21 70. Exhibit E is a letter dated May 4, 2005, from Cindy Davis and Eric Htain,
22 Regulatory Specialists for EDAW Inc., to Marc Fulger, U.S. Army Corps of Engineers,
23 pertaining to the OHMVR Division's request that their Watershed Facilities Maintenance Project
24 ("WFMP") at the Carnegie SVRA be authorized under a Letter of Permission pursuant to Section
25 404 of the Clean Water Act. The WFMP is a project designed to maintain and repair several
26 culverts and sedimentation basins in the Carnegie SVRA. While this project pertains to the
27 accumulation of sediment in Corral Hollow Creek, nothing in this letter or any of the attachments
28

1 to the letter represents or relates to an RWD for discharges to Corral Hollow Creek from ongoing
2 off-highway motor vehicle activity in the Carnegie SVRA.

3 71. Exhibit F is a letter dated July 12, 2005, from Thomas R. Pinkos, Executive
4 Officer for the Central Valley Regional Board, to Jennifer Buckingham, DPR, regarding a
5 request for Clean Water Act Section 401 certification for the WFMP. This letter grants a Water
6 Quality Certification pursuant to Section 401 of the Clean Water Act for the WFMP only. It
7 does not pertain to any other discharges to Corral Hollow Creek in the Carnegie SVRA.

8 72. Exhibit G is a Notice of Exemption and Project Evaluation Form dated September
9 11, 1996, submitted by the DPR to the Office of Planning and Research (“OPR”) concerning the
10 “Stream Bed Channeling” project. While the project involves removal of the accumulation of
11 material in Corral Hollow Creek, nothing in this Notice of Exemption or Project Evaluation
12 Form represents or relates to an RWD for waste discharges to Corral Hollow Creek from the
13 operation of the Carnegie SVRA.

14 73. Exhibit H is a Notice of Exemption and Project Evaluation Form dated September
15 15, 1997, submitted by the DPR to the OPR concerning the “Stream Bank Protection” project.
16 Although the project description specifically notes that erosion of the Corral Hollow stream bank
17 is adding increased sediment loads to Corral Hollow Creek, nothing in this Notice of Exemption
18 or Project Evaluation Form represents or relates to an RWD for waste discharges to Corral
19 Hollow Creek from the operation of the Carnegie SVRA.

20 74. Exhibit I is a Notice of Exemption and Project Evaluation Form dated September
21 15, 1997, submitted by the DPR to the OPR concerning the “Sediment Removal” project.
22 Although the project pertains to the accumulation of sediment in Corral Hollow Creek, nothing
23 in this Notice of Exemption or Project Evaluation Form represents or relates to an RWD for
24 waste discharges to Corral Hollow Creek from the operation of the Carnegie SVRA.

25 75. Exhibit J is a Notice of Exemption and Project Evaluation Form dated July 29,
26 1998, submitted by the DPR to the OPR concerning the “Stream Bank Stabilization” project.
27 Although the project describes the erosion of an embankment along Corral Hollow Creek in the
28 Carnegie SVRA, nothing in this Notice of Exemption or Project Evaluation Form represents or

3 76. Exhibit K is a Notice of Exemption and Project Evaluation Form dated April 17,
4 2000, submitted by the DPR to the OPR concerning the “Viewshed Hillclimb Restoration”
5 project. Although the project pertains to erosional damage from areas in the Carnegie SVRA
6 along the Corral Hollow Creek floodplain, nothing in this Notice of Exemption or Project
7 Evaluation Form represents or relates to an RWD for waste discharges to Corral Hollow Creek
8 from the operation of the Carnegie SVRA.

9 77. Exhibit L is a Notice of Exemption and Project Evaluation Form dated September
10 19, 2002, submitted by the DPR to the OPR concerning the “Streambed Facilities Maintenance”
11 project. Although the project pertains to the accumulation of sediment in Corral Hollow Creek
12 in the Carnegie SVRA, nothing in this Notice of Exemption or Project Evaluation Form
13 represents or relates to an RWD for waste discharges to Corral Hollow Creek from the operation
14 of the Carnegie SVRA.

15 78. Exhibit M is a Notice of Exemption and Project Evaluation Form dated August
16 21, 2002, submitted by the DPR to the OPR concerning the “Sediment Basin Clean Out” project.
17 Although the project pertains to ineffective sediment basins constructed to collect sediment in
18 the Carnegie SVRA before the sediment reaches Corral Hollow Creek, nothing in this Notice of
19 Exemption or Project Evaluation Form represents or relates to an RWD for waste discharges to
20 Corral Hollow Creek from the operation of the Carnegie SVRA.

21 79. Exhibit N is a Notice of Exemption and Project Evaluation Form dated May 22,
22 2002, submitted by the DPR to the OPR concerning the “Dust Control” project. Although the
23 project pertains to silt that is created from watering the roads and parking areas in Carnegie
24 SVRA that contributes to the sedimentation of Corral Hollow Creek, nothing in this Notice of
25 Exemption or Project Evaluation Form represents or relates to an RWD for waste discharges to
26 Corral Hollow Creek from the operation of the Carnegie SVRA.

27 80. Exhibit O is a Notice of Exemption and Project Evaluation Form dated March 7,
28 2003, submitted by the DPR to the OPR concerning the “Watershed Facilities Maintenance”

1 project. Although the project pertains to the accumulation of sediment in Corral Hollow Creek
2 within the Carnegie SVRA, nothing in this Notice of Exemption or Project Evaluation Form
3 represents or relates to an RWD for waste discharges to Corral Hollow Creek from the operation
4 of the Carnegie SVRA.

5 81. Exhibit P is a Notice of Exemption and Project Evaluation Form dated March 16,
6 2003 submitted by the DPR to the OPR concerning the “Road and Trail Repair” project.

7 Although the project pertains to re-grading roads and trails to reduce the sediment deposited to
8 Corral Hollow Creek throughout the Carnegie SVRA, nothing in this Notice of Exemption or
9 Project Evaluation Form represents or relates to an RWD for waste discharges to Corral Hollow
10 Creek from the operation of the Carnegie SVRA.

11 82. Exhibit Q is a receipt dated January 25, 2007, from the Storm Water Section of
12 the State Board to Robert Williamson, District Superintendent of Carnegie SVRA. The receipt is
13 an acknowledgement of DPR’s Notice of Intent to comply with the terms of the General Permit
14 for Storm Water Discharges Associated with Industrial Activity for the Tesla Mining District.
15 This receipt does not pertain to sediment discharges from the Carnegie SVRA and is not an
16 RWD for discharges from the Carnegie SVRA.

17 83. Exhibit R is a letter dated June 26, 2007, from Robert Williamson, DPR, to Jatin
18 Khandwala, Central Valley Regional Board, which attaches the Annual Report for Storm Water
19 Discharges Associated with Industrial Activities for the Tesla Mining District and describes
20 DPR’s plans regarding future storm water monitoring at the site. Nothing in this report
21 represents or relates to an RWD for waste discharges to Corral Hollow Creek from the operation
22 of the Carnegie SVRA.

23 84. Exhibit S is a letter dated September 10, 1997 from Gregory K. Vaughn, Senior
24 Engineer at the Central Valley Regional Board, to Tamara Sasaki, OHMVR Division, pertaining
25 to a waiver of Waste Discharge Requirements and water quality certification for a project in the
26 Carnegie SVRA. This letter is a response to a request by the OHMVR Division for a Clean
27 Water Act Section 401 water quality certification for a project to remove accumulated sediment
28 from both sides of a bridge. *Id.* The Regional Board granted a waiver of the waste discharge

1 requirements for this particular project, since sediment removal would be performed when the
2 creek was dry. *Id.* This letter is not an RWD for the discharges to Corral Hollow Creek from the
3 off-highway motor vehicle activity in the Carnegie SVRA.

4 85. On December 5, 2008, Petitioners sent a subsequent Public Records Act request
5 to DPR pursuant to Cal. Govt. Code section 6250, *et seq.*, requesting, *inter alia*, all records in
6 DPR's possession pertaining to sediment loading, erosion and erosion control, and water quality
7 at the Carnegie SVRA. Exhibit T (letter from Douglas J. Chermak, CSPA and PEER, to Legal
8 Office, DPR (Dec. 5, 2008)). Since this request was identical to Petitioners' December 26, 2007
9 request, Petitioners simply requested responsive documents that DPR received subsequent to the
10 initial request. *Id.*

11 86. On December 29, 2008, Douglas Chermak received an e-mail from Captain John
12 Pelonio, OHMVR Division, listing the responsive documents. Exhibit U (e-mail from Captain
13 John Pelonio, California State Parks OHMVR Division Headquarters, to Douglas J. Chermak
14 (Dec. 29, 2008);

15 87. None of the documents identified by Respondent DPR in response to Petitioners'
16 Public Records Act request of December 8, 2008, whether considered individually or
17 cumulatively, demonstrates that DPR has ever filed an RWD for its waste discharges to Corral
18 Hollow Creek from the off-highway motor vehicle activity in the Carnegie SVRA.

19 88. Exhibit V is a letter dated June 25, 2008, from Robert Williamson to Jatin
20 Khandwala, Central Valley Regional Board, describing and attaching the 2007-2008 Annual
21 Report for Storm Water Discharges Associated with Industrial Activities for the Tesla Mining
22 District. This letter and report pertains to discharges of sediment and sulfates to Corral Hollow
23 Creek from the Tesla Mine site only. Nothing in this letter or the report represents or relates to
24 an RWD for Corral Hollow Creek from OHV activity within Carnegie SVRA.

25 89. Exhibit W is a letter dated September 22, 2008, from Sue McConnell, Chief of the
26 Storm Water Compliance and Enforcement Unit for the Central Valley Regional Board, to
27 Robert Williamson and Peter Dean, Regulatory Specialist for Hetch Hetchy Water and Power.
28 This letter is a Notice of Noncompliance and a Failure to Comply with the California Water

1 Code and the Clean Water Act pertaining to construction activities at Mitchell Ravine within the
2 Carnegie SVRA. *Id.* The letter describes the failures to obtain an NPDES Permit for storm
3 water discharges pertaining to construction activities and a failure to submit an RWD for
4 discharges associated with those activities. *Id.* However, this notice only pertains to
5 construction activities at Mitchell Ravine, and does not consider any discharges to Corral Hollow
6 Creek from the off-highway motor vehicle activity in the Carnegie SVRA.

7 90. Exhibit X is a letter dated October 7, 2008, from Robert Williamson to Sue
8 McConnell, responding to Ms. McConnell's September 22, 2008 letter. This letter describes the
9 construction activities in Mitchell Ravine and indicates that the area is closed to public use and
10 that the construction activities are being done by Hetch Hetchy Water and Power. *Id.* Thus, this
11 letter does not reference any RWDs for waste discharges to Corral Hollow Creek from off-
12 highway motor vehicle activities in Carnegie SVRA.

13 91. Exhibit Y is a letter dated October 15, 2008, from Wendy S. Wyels, Chief of the
14 Compliance and Enforcement Section of the Central Valley Regional Board, to Robert
15 Williamson and Peter Dean, that encloses a Cleanup and Abatement Order directing Hetch
16 Hetchy Water and Power to stabilize and abate impacts to Mitchell Ravine caused by Hetchy
17 Hetchy Water and Power's grading activities within Carnegie SVRA. This order does not
18 pertain to any RWDs for Respondents' waste discharges to Corral Hollow Creek from off-
19 highway motor vehicle activities in Carnegie SVRA.

20 92. On December 26, 2007, Petitioners sent a Public Records Act request to the
21 Central Valley Regional Board pursuant to Cal. Govt. Code section 6250, *et seq.*, requesting all
22 records in the Regional Board's possession pertaining to RWDs, WDRs, NPDES permits, any
23 certifications, any applications, water quality studies or other documents pertaining to water
24 quality, flooding, or erosion at the Carnegie SVRA, including all records of any responsive
25 actions taken by the Regional Board pursuant to such submissions. Exhibit Z (letter from
26 Douglas J. Chermak, CSPA and PEER, to Mary Ann Walton, Regional Board (Dec. 26, 2007)).

27 93. On January 2, 2008, the Regional Board responded in a letter to Douglas
28 Chermak and indicated that it had identified documents responsive to Petitioners' request.

1 Exhibit AA (letter from Greg Vaughn, Senior Engineer, Stormwater and Water Quality
2 Certification Unit, Regional Board (Jan. 2, 2008)).

3 94. None of the documents identified by the Regional Board in response to
4 Petitioners' Public Records Act request of December 26, 2007, whether considered individually
5 or cumulatively, demonstrates that DPR has ever filed an RWD for its waste discharges to Corral
6 Hollow Creek from ongoing off-highway motor vehicle activity in the Carnegie SVRA.

7 95. Exhibit BB is a letter dated June 8, 2005, from Cindy Davis and Eric Htain,
8 Regulatory Specialists for EDAW, to Patrick G. Gillum, Environmental Scientist at the Central
9 Valley Regional Board, that requests a Water Quality Certification pursuant to Section 401 of the
10 Clean Water Act for the Watershed Facilities Maintenance Project ("WFMP") at Carnegie
11 SVRA. This letter only pertains to the WFMP, which only involves removal of sediment and
12 vegetation from some sediment basins and culverts within the Carnegie SVRA. *Id.* at 2-3. The
13 letter and the attachments do not refer to or relate to an RWD for waste discharges to Corral
14 Hollow Creek from ongoing off-highway motor vehicle activity in the Carnegie SVRA.

15 96. On November 6, 2008, Petitioners sent a subsequent Public Records Act request
16 to the Central Valley Regional Board pursuant to Cal. Govt. Code section 6250, *et seq.*,
17 requesting all records in the Regional Board's possession pertaining to RWDs, WDRs, NPDES
18 permits, any certifications, any applications, water quality studies or other documents pertaining
19 to water quality, flooding, or erosion at the Carnegie SVRA, includes all records of any
20 responsive actions taken by the Regional Board pursuant to such submissions. Exhibit CC (letter
21 from Douglas J. Chermak, CSPA and PEER, to Mary Ann Walton, Regional Board (Nov. 6,
22 2008)). Since this request was identical to Petitioners' December 26, 2007 request, Petitioners
23 simply requested responsive documents that the Regional Board received subsequent to the
24 initial request. *Id.* On November 27, 2008, Petitioners received the responsive documents the
25 Regional Board. Chermak Dec'1 at ¶ 4.

26 97. None of the documents identified by the Regional Board in response to
27 Petitioners' Public Records Act request of November 6, 2008, whether considered individually
28

1 or cumulatively, demonstrates that DPR has ever filed an RWD for its waste discharges to Corral
2 Hollow Creek from ongoing off-highway motor vehicle activity in the Carnegie SVRA.

3 **C. Respondents Have Not Conducted the Required Monitoring of Soil**
4 **Conditions.**

5 98. Respondents' have been required to monitor the conditions of soils pursuant to the
6 1991 Soil Conservation Guidelines and Standards ("1991 Soil Guidelines") until the updated
7 standards were released. *See* Public Resources Code §§ 5090.35(b)(1) and (d). Because the
8 2008 Soil Conservation Standard and Guidelines were released in early 2009, Respondents have
9 thus been required to follow the 1991 Guidelines through the end of 2008.

10 99. The 1991 Soil Guidelines, attached hereto as Exhibit DD, establish requirements
11 for annual monitoring reports. Specifically, Section C(IV) requires the OHMVR Division
12 annually to submit a monitoring report by a qualified personnel well-versed in the requirements
13 established in the Guidelines. 1991 Soil Guidelines at 14-15. The report is used to evaluate the
14 status of all off-highway motor vehicle use areas, including roads, trails, tracks, hillclimbs, open
15 ride areas, and staging/parking/camping areas. *Id.* at 15. The report is required to be submitted
16 to the OHMVR Division "for evaluation by resource specialists and will be made available for
17 review by other agencies and the public." *Id.* The report must include a written evaluation if,
18 *inter alia*, accelerated erosion is exceeding the rate of soil formation, water quality has been
19 impaired, gully or mechanical erosion potential is high, and if rehabilitation is necessary for any
20 part of the project. *Id.* at 15-16.

21 100. DPR's response to Petitioners' Public Records Act request requesting all records
22 pertaining to sediment loading, erosion and erosion control, and water quality indicates that no
23 soil monitoring reports were prepared pursuant to the 1991 Soil Guidelines. In the Yang Letter
24 describing the responsive documents in the possession of DPR, only two documents appeared to
25 be indicative of such a soil monitoring report – the "Soil sampling report – December 2005,
26 GeoSyntec Consultants" and the "Workplan soil and ground water characterization Tesla Mine
27 CSVRA September 2001, Resource Design Technology."

28 101. Exhibit EE is a copy of the December 2005 report, officially entitled the
"Carnegie State Vehicular Recreation Area (SVRA) Off Highway Vehicle (OHV) Division of

1 California State Parks: Soil Sampling Report” and dated December 2005. A review of this
2 document reveals that it is not a soil monitoring report for the Carnegie SVRA required by the
3 1991 Soil Guidelines. The introduction states that its objective is “to characterize the soils that
4 are present in the Tesla Mine property.” Exhibit EE at p.4. The report presents an analysis of
5 the soil conditions at the Tesla Mine site in considering whether to expand the existing Carnegie
6 SVRA into this property. See *Id.*; Watershed Assessment, 4. The Tesla Mine property is not
7 part of the existing Carnegie SVRA for which OHMVR Division is required to monitor soil
8 conditions pursuant to Public Resources Code § 5090.35. Thus, this report does not include the
9 required soil monitoring for the Carnegie SVRA.

10 102. Exhibit FF is a copy of the September 2001 report, officially entitled the
11 “Workplan Soil and Ground Water Characterization Tesla Mine Carnegie State Vehicular
12 Recreation Area” and dated September 2001. A review of this document reveals that it is not a
13 soil monitoring report for the Carnegie SVRA required by the 1991 Soil Guidelines. The
14 introduction states that it is a workplan for the Tesla Mine. Exhibit FF, 1. The remainder of the
15 document applies to soils monitoring and other information strictly pertaining to the Tesla Mine
16 Site. Thus, this report does not include the required soil monitoring for the Carnegie SVRA as
17 required by Public Resources Code § 5090.35.

18 103. DPR’s response included one document that specifically discussed the soil
19 monitoring. Exhibit GG is a copy of the documents referred to in the Yang Letter as the
20 “Wildlife Habitat Protection Plan – January 2001”, officially entitled “Carnegie State Vehicular
21 Recreation Area: Wildlife Habitat Protection Plan”, dated January 2001 (“2001 WHPP” or
22 “WHPP”). This plan, prepared by the OHMVR Division outlines proposed soil monitoring loss
23 procedures based on the assessment of revegetation potential described in Public Resources Code
24 § 5090.11. Exhibit GG, 16-17. The procedures include surveying trail condition surveys,
25 inventorying trails, mapping eroded/unvegetated areas, and evaluating and prioritizing areas for
26 treatment. *Id.* The WHPP requires an assessment to be completed by November 30 each year.
27 *Id.* at 17. It also references the 1991 Soil Guidelines, incorporating the soil loss standard set
28 forth in those guidelines, and describes how any parts or segments of the Carnegie SVRA that do

1 not meet the soil loss standard will be temporarily closed and repaired to prevent accelerated
2 erosion until they are capable of meeting the standard. *Id.* at 16-17.

3 104. The WHPP indicates that the first complete soils survey since the state acquired
4 the Carnegie SVRA was completed in 1999. *Id.* at 17. This survey alerted the OHMVR
5 Division that “habitat restoration will be a process that, by necessity, will involve increased and
6 continuing rider education, controlling access by whatever means necessary, and ultimately,
7 increasing staffing.” *Id.*

8 105. The WHPP states that an annual habitat monitoring report “will include the results
9 of soils monitoring surveys and trail inventories, as well as any plans to remediate any problem
10 areas.” *Id.* at 18.

11 106. DPR produced its 2007 Habitat Monitoring Report as part of its response to
12 Petitioners’ December 2008 request for documents. Exhibit HH is a copy of the “2007 Habitat
13 Monitoring Report: Carnegie State Vehicular Recreation Area and Prairie City State Vehicular
14 Recreation Area.” The 2007 Habitat Monitoring Report does not contain any results of soil
15 monitoring surveys and trail inventories, nor does it contain any plans to remediate any problem
16 areas. *Id.*

17 **D. Respondents Have Not Conducted the Required Monitoring of Wildlife**
18 **Habitat.**

19 107. Review of Respondents’ response to Petitioners’ Public Records Act Requests
20 demonstrates that Respondents have not conducted the required monitoring of wildlife habitat
21 pursuant to Public Resources Code § 5090.35. Although DPR did conduct some monitoring in
22 2007, it fell far short of its own extensive monitoring standards.

23 108. Exhibit II is a copy of the “Habitat Monitoring System,” prepared by the OHMVR
24 Division and dated April 1999. The 1999 Habitat Monitoring System (“HMS” or “1999 HMS”)
25 is a document developed pursuant to the OHMVR Act and is focused primarily on vegetation
26 and wildlife habitat monitoring. *Id.* at G-1. It includes a general description applicable to all
27 state vehicular recreation areas and then offers specifics pertaining to each individual location.

28 109. The HMS includes a description of the annual reports that should be generated by
its implementation. The reports should include a report of the monitoring done with results for

1 the year, a completed matrix table to accompany the report, checklist data compiled and
2 available upon request, and a discussion of any unusual results or events. *Id.* at G-20. In
3 addition, the HMS requires a trend report to be prepared every five years which summarizes the
4 data accumulated over the previous years, discusses the changes in trends, and evaluates the
5 effectiveness of current management practices. *Id.*

6 110. The section of the HMS that deals specifically with the Carnegie SVRA
7 references a Carnegie SVRA wildlife habitat protection and monitoring program prepared in
8 1991 that established 40 plots for monitoring vegetation and wildlife and recommended annual
9 monitoring of a subset of those plots. *Id.* at C-18. The HMS describes the methodology for
10 monitoring the numerous types of vegetation and wildlife. *Id.* at C-18 - C-23. The HMS also
11 notes that it only concerns the Carnegie SVRA and does not involve the recently acquired
12 Alameda-Tesla property. *Id.* at C-1.

13 111. The 2001 Carnegie SVRA Wildlife Habitat Protection Plan (“WHPP” or “2001
14 WHPP”), describes the wildlife protection program for the Carnegie SVRA, including the
15 Alameda-Tesla property, prepared pursuant to PRC section 5090.35. Exhibit GG at 1.
16 “[D]esigned to assist resource managers in maintaining and protecting current wildlife
17 populations and their habitats,” the WHPP established a three-tiered process that includes
18 constructing a baseline inventory of plant and animal species, plant communities, and soil types;
19 implementing an annual monitoring program, and managing the park to sustain biodiversity. *Id.*
20 The WHPP highlights the integral relationship between habitat management and erosion control
21 and other soil conservation measures. See *id.*

22 112. The WHPP presents the baseline inventory of plant communities, wildlife
23 populations, and wildlife habitats in the Carnegie SVRA that was conducted in 1989. *Id.* at 3-13.

24 113. The WHPP refers to an “extensive Wildlife Habitat Monitoring System” that was
25 designed for Carnegie SVRA in 1995. *Id.* at 13. It outlines the monitoring protocols described
26 in the earlier 1995 Habitat Monitoring System, including using subsets of the 40 plots to monitor
27 vegetation, mammals, birds, reptiles, and amphibians; photomonitoring, the use of a
28 geographical information system, and aerial photos to detect and manage ecological changes. *Id.*

1 at 13-16. However, the 2001 WHPP does not mention the more recent 1999 Habitat Monitoring
2 System, nor does the 1999 Habitat Monitoring System cite or reference this 1995 Habitat
3 Monitoring System. The 1995 Habitat Monitoring System was not included or listed in
4 Respondent's responses to Petitioners' Public Records Act requests.

5 114. The WHPP describes the requirements for an annual habitat monitoring report for
6 the Carnegie SVRA. The report should summarize the monitoring results and compare them to
7 the previous years' data. *Id.* at 18. It should include "a summary of abiotic factors occurring in
8 the park that may positively or negatively impact wildlife and habitats (i.e. visitor use, resource
9 management projects, park maintenance projects, weather conditions)." *Id.* It should contain "a
10 synopsis of all projects and inventories accomplished that year that aid in the fulfillment of the
11 Wildlife Habitat Protection Plan." *Id.* In addition, the annual report should include the results of
12 the soils monitoring surveys and trail inventories. *Id.*

13 115. The DPR produced the 2007 Habitat Monitoring Report in response to
14 Petitioners' second Public Records Act request. This report does not meet the standards the
15 OHMVR Division established in the 2001 WHPP or the 1999 HMS. The monitoring in the 2007
16 Habitat Monitoring Report only includes a report about the surveys and methods to monitor
17 amphibians, reptiles, birds, small mammals, and nocturnal surveys, as well as the results of those
18 surveys. See Exhibit HH. The 2007 Habitat Monitoring Report lacks the following required
19 elements: any monitoring of vegetation or soils, a comparison of the results to the previous
20 years' data, a discussion of abiotic factors that may impact wildlife and habitats, a synopsis of all
21 projects and inventories accomplished that year that aid in the fulfillment of the WHPP, and an
22 evaluation as to whether the habitat protection plans or habitat protection program are being met.
23 See Exhibit HH; PRC § 5090.35.

24 116. Review of the DPR documents responsive to Petitioners' Public Records Act
25 requests indicates that DPR has never closed and restored noncompliant portions of the Carnegie
26 SVRA in light of a determination that the habitat protection program was not met. See PRC §§
27 5090.11, 5090.35.

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CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Claim for Alternative Writ of Mandate for Failure to Comply with Porter-Cologne – Failure to Submit RWD)

117. The allegations of paragraphs 1-116 are incorporated by reference as though fully set forth herein.

118. At all times herein mentioned, Respondents have been able to perform the duties set forth above. Notwithstanding such ability, the plain duties imposed on Respondents by law, and the demand of Petitioners that Respondents perform such duties, Respondents have failed and continue to fail to submit an RWD for its waste discharges to Corral Hollow Creek at the Carnegie SVRA, in violation of Water Code Section 13260. Respondents’ failure and refusal to act continues to this day. Unless compelled by this Court to do this act required by law of their offices, Respondents will continue to fail and refuse to do so.

119. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law. Hence, no further administrative remedies are available to Petitioners for this claim.

120. If Respondents continue to fail or refuse to submit an RWD, Petitioners will suffer substantial, clear, and certain irreparable injury as Respondents continue to degrade the water quality of Corral Hollow Creek.

SECOND CAUSE OF ACTION

(Claim for Alternative Writ of Mandate for Failure to Comply with Porter-Cologne – Illegal Discharge Prior to Filing RWD)

121. The allegations of paragraphs 1-120 are incorporated by reference as though fully set forth herein.

122. At all times herein mentioned, Respondents have been able to perform the duties set forth above. Notwithstanding such ability, the plain duties imposed on Respondents by law, and the demand of Petitioners that Respondents perform such duties, Respondents have discharged and continue to discharge waste to Corral Hollow Creek at the Carnegie SVRA without filing an RWD, receiving a WDR or conditioned waiver of WDRs from the Regional Board or, if the waste to be discharged does not threaten to cause a condition of pollution or nuisance, holding off on any new or changed discharges for 140 days after submitting an RWD

1 (and only if the project complies with CEQA), in violation of Water Code Section 13264.
2 Respondents' illegal discharges continue to this day. Unless compelled by this Court to do this
3 act required by law of their offices, Respondents will continue to discharge wastes to Corral
4 Hollow Creek without filing an RWD.

5 123. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of
6 law. Hence, no further administrative remedies are available to Petitioners for this claim.

7 124. If Respondents continue these unauthorized discharges, Petitioners will suffer
8 substantial, clear, and certain irreparable injury as Respondents continue to degrade the water
9 quality of Corral Hollow Creek.

10 **THIRD CAUSE OF ACTION**
11 **(Claim for Writ of Mandate for Failure to Comply with Porter-Cologne –**
12 **Failure to Comply with Water Quality Standards)**

13 125. The allegations of paragraphs 1-124 are incorporated by reference as though fully
14 set forth herein.

15 126. Porter-Cologne requires that state offices, departments and boards comply with
16 state policy for water quality control. Water Code § 13146. State policy for water quality
17 controls includes water quality objectives articulated in the Basin Plan. See Water Code §
18 13141.

19 127. Respondents have failed to operate the Carnegie SVRA in a manner that does not
20 result in violations of water quality objectives that apply to Corral Hollow Creek, in violation of
21 Water Code § 13146. In failing to protect water quality standards, Respondents have abused
22 their discretion. This failure is ongoing and continuous.

23 **FOURTH CAUSE OF ACTION**
24 **(Claim for Writ of Mandate for Failure to Comply with the OHMVR Act)**

25 128. The allegations of paragraphs 1-127 are incorporated by reference as though fully
26 set forth herein.

27 129. The OHMVR Act requires that Respondents monitor the conditions of soils and
28 wildlife habitat in the state vehicular recreation areas, and to temporarily shut down and repair
noncompliant portions of the parks until the soil conservation standards and the habitat
protection programs are met. PRC § 5090.35. 32

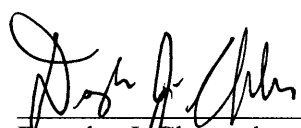
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- 5. Award Petitioner its costs for this suit;
- 6. Award Petitioner its attorneys fees pursuant to CCP § 1021.5; and
- 7. Grant such equitable and legal relief that the Court considers just and proper.

Respectfully Submitted,

Dated: September 17, 2009

LOZEAU DRURY LLP



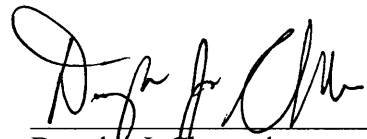
Douglas J. Chermak
Michael R. Lozeau
Attorneys for Petitioners

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VERIFICATION

I, Douglas J. Chermak, state that I am an attorney with Lozeau Drury LLP, the law firm representing Petitioners. I have read the foregoing Petition for Alternative Writ of Mandate, Writ of Mandate, Order to Show Cause, or Other Appropriate Relief and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Civil Procedure Code section 446, subdivision (a) as Petitioners' counsel because the Petitioners are both absent from Alameda County, where I have my office, and the facts are within my knowledge.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on September 16, 2009, at Alameda, California.



Douglas J. Chermak