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

11 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

12 IN RE: CARNEGIE STATE VEHICULAR) **PETITION TO REVIEW**
13 RECREATION AREA, Tracy, California) **CALIFORNIA REGIONAL WATER**
14) **QUALITY CONTROL BOARD,**
15) **CENTRAL VALLEY REGION'S**
16) **FAILURE TO ACT ON**
17) **PETITIONERS' MARCH 19, 2010**
18) **REQUEST**

19 Pursuant to Water Code § 13320, California Sportfishing Protection Alliance and Public
20 Employees For Environmental Responsibility (collectively "CSPA") hereby petition the State
21 Water Resources Control Board ("State Board") to review the California Regional Water Quality
22 Control Board, Central Valley Region's ("Regional Board") failure to act on CSPA's March 19,
23 2010 request for the Regional Board to order the California Department of Parks and Recreation
24 ("DPR") to submit a complete Report of Waste Discharge ("RWD") for waste discharges at the
25 Carnegie State Vehicular Recreational Area ("Carnegie SVRA") within three months; to comply
26 with Water Code §§ 13264, 13146 and 13247; and to establish a Water Quality Monitoring Plan
27 for the Carnegie SVRA. The Carnegie SVRA is located adjacent to Corral Hollow Creek
28 between Tracy and Livermore, California.

I. NAME AND CONTACT INFORMATION OF PETITIONERS.

25 Bill Jennings, Executive Director	Karen Schambach, California Field Director
26 California Sportfishing Protection Alliance	Public Employees for Environmental
3536 Rainier Road	Responsibility
27 Stockton, CA 95204	PO Box 4057
deltakeep@aol.com	Georgetown, CA 95634
	caper@peer.org

1 **II. REGIONAL BOARD FAILURE TO ACT BEING PETITIONED.**

2 This petition seeks review of the Regional Board’s failure to take any action in response
3 to Petitioners’ March 19, 2010 request (“Regional Board Petition”) to take the following actions:

- 4 1) To order DPR to submit within three months of the date of such order a complete
5 RWD as well as all necessary environmental documents required by the California
6 Environmental Quality Act (“CEQA”);
- 7 2) To order DPR immediately to comply with Water Code Section 13264 by ceasing all
8 new or substantially modified discharges that DPR has initiated since it began
9 operation of the Carnegie SVRA in 1980;
- 10 3) To order DPR immediately to comply with the Central Valley Basin Plan and Water
11 Code Sections 13146 and 13247, in particular the narrative and numeric water quality
12 objectives for turbidity, total suspended solids, iron, zinc, lead, copper and aluminum,
13 as well as any other applicable Basin Plan requirements, and;
- 14 4) Pursuant to Water Code § 13267, to order DPR to prepare for the Regional Board’s
15 review and approval, a water quality monitoring plan for its operations at the
16 Carnegie SVRA, including but not limited to sampling of waste discharges from
17 DPR’s sediment ponds and other discharge locations above Corral Hollow Creek and
18 its tributaries; appropriate receiving water monitoring at locations at the upstream
19 boundary of the active SVRA, within the SVRA and where the creek exits the SVRA
20 and; analysis for appropriate pollution parameters.

21 A true and correct copy of Petitioners’ March 19, 2010 request is attached hereto as
22 Exhibit A. To date, the Regional Board has not taken any action in response to Petitioners’
23 request.

24 **III. THE DATE THE REGIONAL BOARD FAILED TO ACT.**

25 Petitioners sent their March 19, 2010 request via overnight delivery and it was received
26 by the Regional Board on March 22, 2010. The Regional Board failed to act as of May 21, 2010.
27 Pursuant to Water Code Section 13220(a), Petitioners appropriately bring this petition within the
28 30-day period commencing 60 days after the request was made to the Regional Board to act.

1 **IV. STATEMENT OF REASONS THE REGIONAL BOARD'S FAILURE TO**
2 **ACT WAS INAPPROPRIATE OR IMPROPER.**

3 DPR is currently operating the Carnegie SVRA in flagrant violation. Although on
4 December 21, 2009, DPR filed a document the agency claimed was a report of waste discharge
5 consistent with Water Code § 13260, the Regional Board informed DPR that it was not
6 sufficient. *See* January 21, 2010 Letter from Kenneth Landau, Regional Board, to Jennifer
7 Buckingham, DPR. As described in the Regional Board Petition, on January 20, 2010, the
8 Regional Board indicated to DPR that its RWD was incomplete, that there were in fact waste
9 discharges from the Carnegie SVRA, and that the Regional Board had questions concerning
10 DPR's compliance with CEQA. Accordingly, DPR continues to discharge pollutants to Corral
11 Hollow Creek from substantial erosion and other disturbances at the Carnegie SVRA without
12 having submitted an adequate RWD or having obtained any authorization from the Regional
13 Board. *See* Regional Board Petition. In addition, DPR continues to discharge new and
14 substantially modified discharges from the site and its discharges are causing violations of
15 numerous water quality objectives applicable to Corral Hollow Creek, including at a minimum
16 the Basin Plan's narrative and numeric water quality objectives for turbidity, total suspended
17 solids, iron, zinc, lead, copper and aluminum. Lastly, Petitioners sought to have the Regional
18 Board begin immediately to close any monitoring gaps that exist from DPR's long-standing
19 violations of Porter-Cologne by ordering monitoring pursuant to Water Code § 13267. DPR's
20 violations are fully documented in the exhibits submitted to the Regional Board as attachments to
21 Petitioners' request. Rather than address DPR's violations, the Regional Board has not
22 responded in any way to the requests made by CSPA and PEER. The Regional Board's failure
23 to respond to Petitioner's request and enforce the requirements of Porter-Cologne was thus
24 inappropriate and improper.

25 **V. STATEMENT OF POINTS AND AUTHORITIES.**

26 The present matter is straightforward – the Regional Board has failed to take action to
27 enforce DPR's failure to comply with DPR's various obligations pursuant to Porter-Cologne for
28 the agency's waste discharges at the Carnegie SVRA. Off-highway motor vehicle use at the

1 Carnegie SVRA is causing sediment, iron, zinc, lead, copper, aluminum, and fluids associated
2 with off-highway motor vehicle use to be discharged to Corral Hollow Creek, a water of the
3 state. In addition, discharges are increasing the turbidity of the water. DPR's violations of
4 Porter-Cologne and the Central Valley Basin plan as well as the Regional Board's
5 responsibilities pursuant to Porter-Cologne are described in the attached Regional Board Request
6 and fully documented in the exhibits presented to the Regional Board.

7 **VI. PETITIONERS ARE AGGRIEVED.**

8 Petitioners California Sportfishing Protection Alliance and Public Employees for
9 Environmental Responsibility and their respective members are aggrieved by the Regional
10 Board's failure to act. Many of petitioners' members live, recreate, and work in and around
11 waters of the State of California, including the Corral Hollow Creek, the San Joaquin River, and
12 the Sacramento-San Joaquin River Delta ("Delta"). Petitioners' members use and enjoy Corral
13 Hollow Creek, the San Joaquin River, and the Delta for recreation and other activities. Members
14 of Petitioners frequently travel on Corral Hollow Road and observe the massive erosion and
15 scarring of the land at the Carnegie SVRA. Members of Petitioners own property in the vicinity
16 of the Carnegie SVRA. When walking or traveling past the Carnegie SVRA, the groups'
17 members frequently observe turbid and polluted water within Corral Hollow Creek as the creek
18 flows past the foot of the Carnegie SVRA. Petitioners' members use those areas to observe and
19 appreciate the landscape and river environment, to birdwatch, to view wildlife and to engage in
20 conservational activities and scientific study including monitoring activities. Petitioners'
21 members also enjoy fishing in waters downstream of Corral Hollow Creek, which waters and
22 fish depend upon an intact and healthy ecosystem in the San Joaquin River, the Delta and their
23 tributaries. Where elements of that ecosystem are reduced or eliminated, Petitioners' members'
24 recreational uses and aesthetic enjoyment of those areas are reduced.

25 **VII. REQUESTED STATE BOARD ACTION.**

26 Petitioners request that State Board issue an order 1) finding that the Regional Board's
27 failure to act was improper, and 2) requiring either the Regional Board or the State Board to
28 perform all of the actions requested in the Regional Board Petition.

1 **VIII. STATEMENT OF COPIES SENT TO THE REGIONAL BOARD AND**
2 **DISCHARGER.**

3 Copies of this petition are being sent to the Regional Board, DPR, and Carnegie SVRA at
4 the following addresses and, where known, e-mail addresses:

5 Pamela Creedon, Executive Officer
6 Kenneth D. Landau, Assistant Executive
7 Officer
8 Regional Water Quality Control Board
9 Central Valley Region
10 11020 Sun Center Drive #200
11 Rancho Cordova, CA 95670-6114
12 pcreedon@waterboards.ca.gov
13 klandau@waterboards.ca.gov

14 Michael Lauffer
15 Lori Okun
16 Office of Chief Counsel
17 State Water Resources Control Board
18 1001 I Street, 22nd Floor
19 Sacramento, CA 95814
20 mlauffer@waterboards.ca.gov
21 lokun@waterboards.ca.gov

Ruth Coleman, Director
California Department of Parks and
Recreation
1416 9th Street
Sacramento, CA 95814

Jennifer Buckingham, District Services
Manager
Twin Cities District
California Department of Parks and
Recreation
13300 White Rock Road
Rancho Cordova, CA 95742

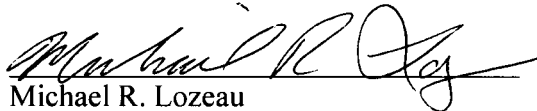
Robert Williamson, District
Superintendent
Division of Off-Highway Motor Vehicle
Recreation
Twin Cities District
Carnegie SVRA
15751 Tesla Road
Livermore, CA 94550-9167

22 **IX. ISSUES RAISED BEFORE REGIONAL BOARD.**

23 Petitioners certify that each of the issues set forth above were presented in writing to the
24 Regional Board in CSPA's and PEER's request to the Regional Board dated March 19, 2010.

25 Dated: May 24, 2010

26 Respectfully submitted,



27 Michael R. Lozeau
28 Attorney for Petitioners California Sportfishing Protection
Alliance and Public Employees for Environmental
Responsibility

EXHIBIT A



T 510.749.9102
F 510.749.9103

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Alameda, Ca 94501

www.lozeaudrury.com
michael@lozeaudrury.com

March 19, 2010

Via Overnight Delivery

Pamela Creedon, Executive Officer
Kenneth D. Landau, Assistant Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Re: Request for the Regional Water Quality Control Board, Central Valley Region to Order the California Department of Parks and Recreation to Submit a Complete Report of Waste Discharge Within Three Months; to Comply With Water Code §§ 13264, 13146 and 13247, and; to Establish a Water Quality Monitoring Plan for the Carnegie State Vehicle Recreational Area.

Dear Ms. Creedon and Mr. Landau,

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) and Public Employees For Environmental Responsibility (“PEER”) to request that the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”) take affirmative action to address ongoing pollution at the Department of Parks and Recreation’s (“DPR”) Carnegie State Vehicle Recreation Area (“Carnegie SVRA”) located on Tesla/Corral Hollow Road between Tracy and Livermore. This request follows up correspondence provided to the Regional Board by CSPA and PEER on September 9, 2009, describing in detail DPR’s uncontrolled waste discharges to Corral Hollow Creek and the agency’s blatant violations of the Water Code. Since 1981, DPR has been operating the Carnegie SVRA in violation of the Porter-Cologne Water Quality Control Act by failing to submit a complete report of waste discharge describing DPR’s substantial waste discharges to Corral Hollow Creek from its operation of the Carnegie SVRA. In addition, DPR has failed to take any steps to comply with Water Code § 13264 by initiating new and substantially modified waste discharges at the Carnegie SVRA that have caused and threaten to cause pollution or nuisance prior to obtaining WDRs or, if appropriate, any conditional waiver. Lastly, DPR is violating the Central Valley’s Basin Plan in violation of its duties under Water Code §§ 13146 and 13247 which require that state offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control. Each of these violations is fully documented in the Verified Petition for Writ of Mandate and accompanying exhibits and briefing previously submitted to the Alameda Superior Court. Copies of the following documents are submitted in support of this request and hereby incorporated by reference:

- Verified Petition for Alternative Writ of Mandate dated September 17, 2009, including relevant exhibits;
- Petitioner’s Memorandum of Points and Authorities in Support of Application for Alternative Writ of Mandate (dated September 17, 2009)

- Declaration of Steven Bond in Support of Ex Parte Application for Alternative Writ of Mandate (dated September 17, 2009);
- Petitioners' Reply Brief in Support of Application for Alternative Writ of Mandate (dated November 17, 2009);
- Supplemental Declaration of Douglas J. Chermak in Support of Petitioners' Reply Brief in Support of Application for Alternative Writ of Mandate (dated November 17, 2009) including exhibits;
- Petitioners' Second Request for Judicial Notice in Support of Application for Alternative Writ of Mandate (dated November 17, 2009);
- Declaration of Mark Connolly in Support of Ex Parte Application for Alternative Writ of Mandate (dated September 17, 2009);
- Declaration of Mark Connolly in Opposition to Stay (dated December 17, 2009).

On December 21, 2009, in response to a writ of mandate issued by the Alameda County Superior Court pursuant to a lawsuit filed by CSPA and PEER, DPR submitted to the Regional Board an incomplete report of waste discharge for DPR's operation of the Carnegie SVRA. On January 20, 2010, the Regional Board responded to DPR explaining that the report of waste discharge was incomplete, including a question regarding DPR's compliance with the California Environmental Quality Act ("CEQA") for any new WDRs or conditional waiver. The Regional Board also confirmed that "[m]onitoring data indicates ongoing sediment discharges." The Regional Board's response did not require DPR to submit any information by any date certain. Nor did the response address DPR's compliance with either Water Code Section 13264 or Sections 13146 and 13247. To date, DPR has failed to submit a complete report of waste discharge to the Regional Board.

CSPA and PEER hereby request that the Regional Board immediately take the following actions:

- 1) the Regional Board order DPR to submit within three months of the date of such order a complete report of waste discharge as well as all necessary environmental documents required by CEQA;
- 2) the Regional Board order DPR immediately to comply with Water Code Section 13264 by ceasing all new or substantially modified discharges that DPR has initiated since it began operation of the Carnegie SVRA in 1980;
- 3) the Regional Board order DPR immediately to comply with the Central Valley Basin Plan and Water Code Sections 13146 and 13247, in particular the narrative and numeric water quality objectives for turbidity, total suspended solids, iron, zinc, lead, copper and aluminum, as well as any other applicable Basin Plan requirements, and;
- 4) pursuant to Water Code § 13267, the Regional Board order DPR to prepare for the Regional Board's review and approval, a water quality monitoring plan for its operations, including but not limited to sampling of waste discharges from DPR's sediment ponds and other discharge locations above Corral Hollow Creek and its tributaries; appropriate receiving water monitoring at locations at the upstream

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boundary of the active SVRA, within the SVRA and where the creek exits the SVRA and; analysis for appropriate pollution parameters.

If the Regional Board fails to act within 60-days of this request consistent with each of the above requests, CSPA and PEER intend to petition the State Water Resources Control Board to review the Regional Board's inaction. If you have any questions or would like to discuss this request further, please give me a call at (510) 749-9102 x. 103.

Sincerely,



Michael R. Lozeau
Attorney for CSPA and PEER

cc: Jennifer Buckingham, District Services Manager
Twin Cities District
California Department of Parks and Recreation
13300 White Rock Road
Rancho Cordova, CA 95742

Encls.