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8 STATE OF CALIFORNIA
9 STATE WATER RESOURCES CONTROL BOARD
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11 IN THE MATTER OF ROOT CREEK
WATER DISTRICT WASTE DISCHARGE
12 REQUIREMENTS, ORDER R5-2015-0018,
APRIL 16, 2015
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PETITION FOR REVIEW
[Cal. Wat. Code, § 13320; Cal. Code Reg.,
tit 23, § 2050]

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16 Pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23 of the
17 California Code of Regulations, Petitioner Richard Gunner (“Petitioner”) submits this petition for
18 review of the Waste Discharge Requirements Order No. R5-2015-0018 for the Root Creek Water
19 District (“Root Creek”), Riverstone Wastewater Treatment Facility, Madera County, issued by the
20 Regional Water Quality Control Board, Central Valley Region (the “Regional Board”) on April 16,
21 2015.

22 **I. NAME AND ADDRESS OF PETITIONER**

23 The Petitioner in this matter is Richard Gunner, c/o Jeffrey M. Reid of McCormick Barstow,
24 Sheppard, Wayte & Carruth, LLP, 7647 North Fresno Street, Fresno, CA 93720.

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1 **II. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH**
2 **PETITIONER REQUESTS THE STATE WATER BOARD TO REVIEW**

3 Petitioner requests review of the Regional Board's April 16, 2015 Order adopting Waste
4 Discharge Requirements Order No. R5-2015-0018 for the Root Creek Water District, Riverstone
5 Wastewater Treatment Facility, Madera County (the "WDR Order"). (A copy of the WDR Order is
6 attached hereto as Exhibit "A.")

7 **III. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT**
8 **OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT**

9 The Regional Board adopted the WDR Order on April 16, 2015.

10 **IV. THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR**
11 **IMPROPER**

12 As explained in further detail in the below Statement of Points and Authorities, the Regional
13 Board's WDR Order adopted Waste Discharge Requirements which accepted and incorporated several
14 substantial changes to the Project that will result in significant environmental impact(s), without
15 conducting the additional environmental analysis mandated by the California Environmental Quality
16 Act ("CEQA").

17 The initial proposed Wastewater Treatment Facilities ("WWTFs") and the Riverstone
18 Development generally (formerly Gateway Village) were reviewed as part of the Gateway Village
19 Specific Plan Environmental Impact Report (the "EIR"), which was certified by the Madera County
20 Board of Supervisors on September 11, 2007. Several years after the approval of the EIR, several
21 significant changes were made to the project, which became apparent upon Root Creek's submission
22 of the Report of Waste Discharge ("RWD") and Anti-degradation Study to the Regional Board prior
23 to the Regional Board's December 5, 2014 hearing. (True and correct copies of the RWD and Anti-
24 degradation Study are attached hereto as Exhibits "B" and "C" respectively.)

25 Specifically, Root Creek made the following five (5) substantial changes to the Project without
26 sufficient analysis of the significant environmental impacts that will result therefrom:

27 1. The EIR provides that WWTFs would produce a secondary disinfected effluent, which
28 is considered a higher level of treatment than the secondary undisinfected level allowed by the WDR

1 Order. The disinfection step reduces pathogens and allows for an increased variety of reclamation
2 options. The WDR Order's allowance for the production of a secondary undisinfected effluent reduces
3 the reclamation options.

4 2. The EIR assumes that treated effluent will be stored in lined ponds when demand for
5 irrigation water is minimal, and assumes that such storage would preserve the treated effluent for use
6 as irrigation to dedicated cropland. This was one of the fundamental assumptions in the determination
7 that the Project would be able to meet its surface water obligations and would be able to provide
8 recharge to the Project's water supply.

9 3. The EIR states that treated effluent will be stored in lined ponds when demand for
10 irrigation water is minimal, which provides a high level of protection for the groundwater. The WDR
11 Order revises the storage method to percolation/evaporation ponds.

12 4. The WDR Order deletes the disinfection step through the use of chlorine contact tanks
13 that was included in the approved EIR. The disinfection of effluent is an important step in providing a
14 safe, useable product for reclamation.

15 5. The EIR specifically states that all sludge will be processed and treated so that it may
16 be classified as Class A, suitable for disposal with minimum restriction on use. The WDR Order
17 states the sludge may be dried and hauled or alternatively, stored in wet bins and hauled off site.
18 These options will produce a sludge that is classified as Class B. The use of Class B sludge entails
19 significant disposal restrictions.

20 The above-listed changes and their significance are explained in a report prepared by the
21 engineering firm of AECOM, which was provided to the Regional Board and was the subject of
22 extensive testimony at both hearings. (A true and Correct copy of this report is attached hereto as
23 Exhibit "D.")

24 Petitioner notified the Regional Board of these several significant changes to the Project
25 through multiple items of written correspondence and in-person testimony at the December 5, 2014
26 and April 16, 2015 hearings on this matter. (True and copies of all correspondence provided to the
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1 Regional Board on behalf of Petitioner are attached hereto as Exhibit "E.")¹ The Regional Board did
2 not require a supplemental or subsequent EIR, but instead adopted the WDRs after the submission of a
3 mere EIR addendum, which does not sufficiently analyze the environmental impact of these changes
4 to the Project. (A true and correct copy of the EIR Addendum is attached hereto as Exhibit "F.") This
5 decision was not supported by substantial evidence and is in violation of CEQA. Moreover, the
6 removal of the environmental protections previously associated with the WWTF and built in to the
7 Project description is the functional equivalent of removing or modifying mitigation measures. No
8 attempt was made to meet the burden required for the deletion or modification of these environmental
9 protections. Thus, the WDR Order should be set aside with instructions that further environmental
10 impact analysis be conducted in the form of a subsequent or supplemental EIR.

11 **V. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED**

12 Petitioner is aggrieved by the WDR Order because the above-outlined substantial changes to
13 the Project will result in significant environmental impacts that have not been properly considered
14 prior to adoption of the WDR Order. Petitioner is the owner of an adjacent property within the
15 environs of the Project and may face detrimental effects that cannot be fully understood and evaluated
16 without further environmental impact analysis and public comment regarding substantial changes to
17 the Project.

18 **VI. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
19 **PETITIONER REQUESTS**

20 Petitioner requests that the WDR Order be set aside with instructions that further
21 environmental impact analysis in the form of a supplemental or subsequent EIR be conducted as a
22 prerequisite to the issuance of any further waste discharge permitting.

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27 ¹ These items of correspondence are provided without the attachments that were sent to the Regional
28 Board, if the attachments are otherwise included with this Petition.

1 **VII. STATEMENT OF POINTS AND AUTHORITIES**

2 **A. Standard for Requirement of Further EIR Preparation**

3 When substantial changes are proposed in a project, a Subsequent or Supplemental EIR is
4 required (Public Resources Code Section 21166(a).) CEQA Guidelines Section 15162(a)(1) further
5 detail that further EIR preparation is required where: (1) the change in the project is substantial; (2)
6 the change involves new or more severe significant environmental impacts; (3) the change will require
7 major revisions to the previous EIR based on the new or more severe impacts; and, (4) the more
8 severe impacts were not considered in the prior EIR.

9 **B. Insufficiency of the Addendum Process**

10 Rather than a supplemental or subsequent EIR, the Regional Board only prepared a brief
11 addendum to the EIR. (See Exhibit "F.") From a pure public policy standpoint, an addendum has the
12 significant disadvantage that it is not circulated for public review and comment. That is because it is
13 designed for use in circumstances where there are merely minor corrections necessary in the prior
14 EIR, or the document is developed to demonstrate the agency's determination that a subsequent or
15 supplemental EIR is not required. (CEQA Guidelines Section 15164.) Stated another way, an
16 addendum is acceptable, rather than a new or Supplemental EIR, when there are only minor technical
17 changes or additions which do not raise new issues about the significant effects on the environment.
18 (*Ventura Foothill Neighbors v. County of Ventura* (2014), 232 Cal.App.4th 429.) Substantial evidence
19 must support that determination. For the reasons detailed below, that determination is not appropriate
20 in this matter because the circumstances requiring a subsequent or supplemental EIR exist. Therefore,
21 both public policy and legal standards mandate an approach that does not rely on a mere addendum.

22 **C. Substantial Changes Requiring Further Environmental Analysis**

23 *1. Change From Lined Ponds to Percolation Ponds*

24 In this instance, the decision to utilize percolation ponds rather than line ponds for the storage
25 of treated effluent is a significant change in the Project that will have two important and severe
26 impacts not considered in the prior EIR. (See AECOM Report, Exhibit "D.") First, this change will
27 have the substantial effect on the Project's water balance of removing the availability of recycled
28 effluent for beneficial use and groundwater recharge. Second, this change will result in the percolation

1 of undisinfected effluent to the aquifer. In light of these substantial changes, that EIR must be
2 modified in a manner that provides more than a mere clarification or correction. It requires a
3 substantial new analysis that is a major revision of the prior EIR.

4 a. Impact of Revision on EIR's Water Supply Assessment

5 The EIR certified by the County of Madera for the Project relied, in part, on the WSA for the
6 Project, which was prepared initially for Root Creek. (A true and correct copy of the WSA is attached
7 hereto as Exhibit "G.") Section 9 of the WSA details the proposed water supply for the Project. At
8 section 9.3, it represents to the public that reclaimed water will be stored in lined ponds and used to
9 irrigate crops on the designated disposal areas. That arrangement is to provide groundwater recharge,
10 by diminishing the demands on groundwater that the agricultural uses otherwise created. It is therefore
11 part of the overall program of assuring water supply reliability for the Project, and addressing the then
12 existing groundwater overdraft within the Root Creek Water District. Section 8.3 of that WSA also
13 discusses water conservation measures and quotes from the Gateway Village 2006 Infrastructure
14 Master Plan ("IMP"). (A true and correct copy of the IMP is attached hereto as Exhibit "H.") It states
15 that "all wastewater effluent shall be conjunctively reused within RCWD either as reclaimed water or
16 for agricultural irrigation."

17 Despite the EIR's obvious reliance on lined ponds and recycled effluent to maintain the
18 Project's water balance, the WDR Order states that effluent generated during use of the Interim phase
19 of the Project will not be stored in lined ponds or conjunctively reused in any manner. (See Ex. A ¶¶
20 8-13.) The entire amount will be percolated into the ground. In addition, the Ultimate phase of the
21 Project no longer intends to use conjunctive reuse of effluent as the sole method of discharge. (*Id.* at
22 ¶¶ 14-21.) A substantial portion of the effluent will now be percolated into the ground. (*Ibid.*) These
23 are significant changes in the Project and have important impacts on the water balance arrangements
24 represented by the WSA.

25 The significance of this impact is illustrated by Table 1 of the WSA. That table demonstrates
26 how Root Creek intends to achieve the requirements of the WSA, to address an overall 3,400 acre-feet
27 of overdraft. The table details the contributions of six stated approaches. It confirms that the goal is
28 not achieved without substantial reliance on the conjunctive reuse of the effluent (as detailed in its

1 measures 3 and 4.) The amount of effluent estimated for conjunctive reuse by the WSA also did not
2 account for loss of water to the aquifer arising from percolation of the effluent. However, based on
3 engineering analysis conducted by Root Creek's own engineer (which will be described in further
4 detail below), percolation of effluent will result in significant loss of such waters from the underlying
5 aquifer.

6 Moreover, the RWD and its related addendums have information that, when parsed through,
7 allows a reviewer to discern the significance that this Project change will contribute to the over drafted
8 water aquifer (though there is no discussion of the impact of that significant change). The Initial Plant
9 will provide no conjunctive use of effluent, and that circumstance will continue for up to 10 years. The
10 RWD, Section 3 (page 10) confirms that the Initial Plant is intended to operate for up to 8.6 years. The
11 Anti-degradation Study, Section 6.4.1 (page 24) states that the Initial Plant will operate for
12 approximately seven (7) to ten (10) years.

13 The quantity of effluent, in acre-feet per year, is detailed in Exhibit E to the RWD. The first
14 page of that Exhibit confirms that 336 acre-feet of effluent will be generated and sent to the
15 percolation ponds. The calculations assume that, after evaporation, 81% of the ponded effluent is
16 percolated (see also Section 5.1 of the Report of Waste Discharge.) As a result, 272 acre-feet per
17 annum of effluent, which the WSA assumed would be applied to conjunctive use, is being percolated.
18 That is 2,720 acre-feet over the 10-year life of the Interim Plant.

19 Thereafter, during the initial operation of the Ultimate Plant, as shown on page 2 of Exhibit E
20 to the RWD, 403 acre feet per annum of effluent is delivered to the ponds for percolation. After
21 accounting for the report's assumed evaporation, the calculations demonstrate that 326 acre-feet per
22 annum of effluent, which the WSA assumed would be applied to conjunctive use, is being percolated.
23 That is 3,264 additional acre-feet over the remaining ten (10) years of the WSA's analyzed 20-year
24 framework.

25 When the Ultimate Plant expands from 0.9 MGD to 1.8 MGD, as shown on page 3 of Exhibit
26 E to the RWD, 829 acre-feet per annum of effluent is delivered to the ponds for percolation. After
27 accounting for the reports assumed evaporation, the calculations demonstrate that 671 acre-feet per
28 annum of effluent, which the WSA assumed would be applied to conjunctive use, is being percolated.

1 Also, the percolation itself may cause substantial loss to the effluent with minimal contribution
2 to the underlying aquifer. The engineering firm of Provost and Pritchard prepared an analysis of the
3 benefit to the local aquifer of percolated effluent intended for another project in the immediate
4 environs of the Root Creek Water District. (A true and correct copy of this report is attached hereto as
5 Exhibit "I.") This report states that it is not reasonable to assume that percolated effluent in these
6 environs is a 100% contribution to the underlying aquifer (even after deducting for evaporation).
7 Instead, Provost and Pritchard recommend a 50% reduction in the benefit to the aquifer from
8 percolated effluent. (See Exhibit "I," note (1) to Provost and Pritchard Water Demand and Balance
9 Calculations for Gunner Ranch West Development.) There is no substantial evidence in this record to
10 conclude that percolation efficiencies for the Root Creek Project is any different than those assumed
11 for the project evaluated in Exhibit "I."

12 Applying Provost and Pritchard's above described percolation efficiency assumptions to its
13 above-described water balance calculations, the new design of the Interim Plant will result in a loss to
14 the aquifer of 136 acre-feet of water, per annum. For the initial capacity of the Ultimate Plant, the
15 Project change will result in a loss to the aquifer of 163 acre-feet per annum. At full projected build-
16 out of the Ultimate Plant, the Project change will result in a loss to the aquifer of 336 acre-feet per
17 annum. These calculations are all supported by the analysis of the above-described materials,
18 conducted by the engineering firm of AECOM. (See Ex. "D.")

19 The analysis of these impacts requires an inventory all of the effluent to be generated during
20 the years that the Initial Plant is operated, and how much is expected to be percolated. It also requires
21 a consideration of the potential loss to the aquifer of portions of the effluent (beyond losses generated
22 by evaporation). A similar analysis must be done for both phases of the Ultimate Plant since
23 significant amounts of effluent will continue to be percolated. This analysis simply cannot be
24 adequately accomplished without the requirement of a supplemental or subsequent EIR – the EIR
25 Addendum has clearly failed in this regard.

26 b. Requirement to Import Offsetting Surface Supply

27 The Regional Board issued the WDR Order with no requirement for further CEQA evaluations
28 beyond a mere addendum, based in part upon the fact that there are contracts for surface water

1 supplies that Root Creek has entered into, which are described in the WSA. A review of the relevant
2 documents shows that this assertion is not accurate.

3 The element of the Specific Plan that references water balance commitments is the IMP. (See
4 Ex. "H.") At page 17, the IMP states that a groundwater recharge program is being instituted to
5 replace the 3,400 acre-feet of overdraft, on a five year rolling average basis. The recharge program is
6 described as a combination of direct recharge via land application and in-lieu recharge. It does not
7 state that surface water is being used to address the entire 3,400 acre-feet of existing overdraft. Indeed,
8 a substantial portion of the intended 3,400 acre-feet of recharge is intended to come from direct
9 recharge, which was to result from the conjunctive reuse of the effluent. This is further emphasized at
10 page 22, where the County-approved IMP notes, "All wastewater effluent shall be conjunctively
11 reused within RCWD either as reclaimed water or for agricultural irrigation."

12 Page 29 of the IMP discusses the extent of commitment to surface water imports in more
13 detail. It states that proposed in-lieu system will deliver approximately 3,304 acre-feet of irrigation
14 water annually. It further states, "The commitment of the Project through combined groundwater
15 overdraft reduction programs is to perform 3,400 AF/year of recharge as measured on a rolling five
16 year-average basis, an amount adequate to eliminate the current groundwater deficit within RCWD."

17 (*Ibid.*)

18 In limitation of that commitment, it further states "There is no intent to fully utilize these in-
19 lieu facilities every single year, and there is no commitment to increase the 3,4000 AF/year
20 contribution from the combined groundwater overdraft reduction programs toward district-wide
21 overdraft even if subsequent study shows the estimated overdraft to have increased." (*Ibid.*)

22 The IMP makes clear that the primary surface water supply to be used to augment the
23 conjunctive use of effluent is contracts for Section 215 flood flows and Class 2 water supplies. The
24 Specific Plan IMP does not primarily rely upon, nor commit Root Creek to provide as a Project
25 requirement, the "up to" 7,000 ace-feet of water available under the Westside Water Company
26 contract that was subsequently assumed by Paramount Land Company. Regarding the commitments to
27 the use of that Paramount water to benefit the aquifer, the IMP states "It is again noted that the back-
28 up water supply is intended as a fail-safe, and under ideal or average conditions will not have to be

1 used to maintain the required rolling-average water balance. It has been put in place only to assure
2 stakeholders that the project's water supply is not at risk in even a series of dry and very-dry years."
3 (*Id.* at 30.)

4 Based on the actual language of the Specific Plan, there is no commitment to supply 3,400
5 acre-feet of surface water annually. Nor is there a commitment to supply any of the water made
6 available under the contract with Paramount.

7 More fundamentally, there is no description of how the impact of changing from conjunctive
8 use of all effluent, to percolation of effluent, will change the previously evaluated water balance
9 calculations. Provost and Pritchard has acknowledged its belief that percolated effluent will be a
10 significantly diminished benefit to the underlying aquifer, versus the original Project's intended
11 application to crops. (See Ex. "I.") Moreover, the Specific Plan confirms that there is no intent to
12 adopt additional measures to address changes in the previously assumed groundwater overdraft. How
13 the change to percolation of effluent, versus conjunctive use, will be addressed in these water balance
14 commitments is unknown. This is a new significant impact, arising from significant changes in the
15 Project, which were not previously analyzed in the prior EIR. Major revisions to the EIR must be
16 made to address this new impact. Those revisions should be subjected to public review and comment,
17 as either a Subsequent EIR or Supplemental EIR.

18 As set forth above in Section IV, the previous design of the WWTF had certain mitigation
19 built into the design of the WWTF. The WDR effectively eliminated that mitigation without the
20 appropriate findings or replacement measures. When mitigation is built into a project's design, the
21 lead agency may presume that the project will be implemented consistent with the project description.
22 (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1035.)
23 Once a mitigation measure has been adopted for a project, the approving agency may not cancel that
24 mitigation without reviewing the continuing need for it, stating its reasons for the change, and
25 supporting its decision with substantial evidence. (*Katzeff v. Department of Forestry & Fire*
26 *Protection* (2010) 181 Cal.App.4th 601, 614.) Mitigation may be modified or deleted only if the lead
27 agency finds that the measure is infeasible or unnecessary. (*Mani Bros. Real Estate Group v. City of*
28 *Los Angeles* (2007) 153 Cal.App.4th 1385, 1388; *Napa Citizens for honest Gov't v. Napa County Bd.*

1 (2001) 91 Cal.App.4th 342, 359.)

2 The WWTF contemplated by the EIR required lined ponds. This was necessary to achieve
3 conjunctive use of 100% of the effluent and to achieve the water balance contemplated in the initial
4 Project approvals. Additionally, the change in design eliminates all conjunctive use if the effluent for
5 the initial portion of the Project because the effluent will not be treated to the level necessary for
6 agricultural use. Had the original Project description not called for lined ponds, additional analysis
7 resulting in additional mitigation measures would have been required. This is simply a case of hiding
8 a mitigation measure in a project's description so as to later allow for its removal without the same
9 level of analysis.

10 In conjunction with the above-mentioned significant changes, this change warrants further
11 environmental analysis in the form of major revisions to the EIR, in order to assess the potentially
12 significant impact. Those revisions should be subjected to public review and comment, as either a
13 Subsequent EIR or Supplemental EIR.

14 2. *Change in Intended Disinfection of Effluent*

15 In its statement of CEQA Compliance, the RWD inaccurately states that the original intended
16 design for the Phase A Project was to include an undisinfected design. This statement is contradicted
17 by that Report's own immediately following paragraph, which quotes from the EIR certified for the
18 Project. That paragraph quoted from the EIR states that "The Phase A WWTP would be designed to
19 treat wastewater to disinfected secondary standards suitable for irrigation on agricultural lands, such
20 as citrus trees in the Effluent Disposal Area." (Emphasis added.) Therefore, in describing its intended
21 CEQA Compliance, the Report of Waste Discharge fails to acknowledge (and perhaps innocently
22 misrepresents) the fact of the change from disinfected to undisinfected design.

23 The negative consequences of percolating undisinfected effluent into the groundwater table is
24 addressed in the AECOM study. (See Ex. "D.") Specifically, the additional disinfection step assumed
25 in the EIR reduces pathogens which is safer for the public and allows for an increased variety of
26 reclamation options. That is, the Regional Board's WDR Order reduces the reclamation options
27 assumed by the EIR. This is a new significant impact, arising from significant changes in the Project,
28 which were not previously analyzed in the prior EIR. Major revisions to the EIR must be made to

1 address this new impact. Those revisions should be subjected to public review and comment, as either
2 a Subsequent EIR or Supplemental EIR.

3 3. *Change from Class A to Class B Biosolids*

4 The negative consequences of processing sludge generated by the Project to Class B standards,
5 as opposed to Class A standards, is addressed in the AECOM study. (See Ex. “D” at p. 2.)
6 Specifically, Class A sludge is suitable for disposal with minimum restriction on use. However, the
7 WDR Order allows the sludge to be dried and hauled or alternatively stored in bins. These options
8 produce a sludge that is classified as Class B. Class B sludge entails significant disposal restrictions.
9 (*Ibid.*)

10 **D. Insufficiency of the Evidence Relied Upon by the Regional Board**

11 1. *The EIR Addendum Understates Lost Recharge*

12 The EIR Addendum (upon which the Regional Board relied in issuing the WDR Order) under
13 the heading “A potential change in the water balance within Root Creek Water District,” partially
14 acknowledges an important issue addressed in the Prior Submittal. (See Ex. “F” at 7.) Because of the
15 change in the Project, the Initial Plant will send approximately 300 acre-feet, per annum, of effluent to
16 percolation ponds. The adopted Water Supply Assessment for the Project had assumed all of this
17 effluent would be stored in lined ponds and recycled for agricultural and other irrigation uses. (See
18 Exhibit “G” § 9.) Based on engineering analysis provided by Provost and Pritchard (the engineers for
19 the Project), it can be assumed one-half of all the effluent delivered to the percolation ponds (after
20 accounting for evaporation), will be lost to the relevant aquifer. (See Exhibit “I,” note (1) to Provost
21 and Pritchard Water Demand and Balance Calculations for Gunner Ranch West Development.) This is
22 an annual loss of 150 acre-feet of recharge.

23 The EIR Addendum does not acknowledge that the loss of recharge to the relevant aquifer will
24 continue beyond the Initial Plant operations, and through all future phases of the proposed WWTF.
25 During these future phases, some of the effluent will be recycled for agricultural and other irrigation.
26 (See Section VII(C)(1), *supra.*) However, all phases of the WWTFs propose a new plan to use
27 percolation ponds. (*Ibid.*) This is a change in the original Project, which had assumed the use of lined
28 ponds in the Certified EIR and the relevant Water Supply Assessment. (*Ibid.*) It is a change that results

1 in loss of recharge to the relevant basin to an extent not referenced in the EIR Addendum.

2 As detailed above, during the 0.9 MGD phase of the WWTF operations (beyond the Initial
3 Plan), use of percolation ponds rather than lined ponds will result in 403 acre-feet per annum of
4 effluent delivered to the percolation ponds. (See Section VII(C)(1)(b), *supra.*) After accounting for
5 assumed evaporation, 326 acre-feet per annum of effluent, which the WSA assumed would be applied
6 to conjunctive use, is being percolated. This results in 3,264 additional acre-feet that will be lost over
7 the remaining 10 years of the WSA's analyzed 20-year timeframe.

8 When the Ultimate Plant expands from 0.9 MGD to 1.8 MGD, 829 acre-feet per annum of
9 effluent will be delivered to ponds for percolation. (See Section VII(C)(1), *supra.*) After accounting
10 for assumed evaporation, 671 acre-feet per annum of effluent, which the WSA assumed would be
11 applied to conjunctive use, is being percolated.

12 In addition, the one-half assumed loss referenced in Provost and Pritchard's analysis will likely
13 result in further lost recharge in all phases. (See Ex. "I.")

14 Therefore, these changes in the Project, which propose use of percolation ponds for all of its
15 phases, will result in a significant loss of water to the basin. This aspect of the change in the Project,
16 for periods beyond the initial phase, and the impact of these changes, was not referenced in the EIR
17 Addendum. The EIR Addendum only referenced the loss of the waters to the basin occurring during
18 the initial phase. It significantly understated and failed to analyze the environmental impacts caused
19 by the use of percolation ponds in the later phases of the WWTF.

20
21 *2. The EIR Addendum Inappropriately Relies on Unenforced Commitments of
Root Creek to Offset New Impacts on the Groundwater Aquifer*

22 As noted above, the EIR Addendum acknowledged some, but not all, of the potential loss of
23 groundwater recharge to the aquifer resulting from Project's new adoption of percolation ponds.
24 However, it declares this loss of the recharge to be of no consequence. (See Ex. "F" at 7-8.) The EIR
25 Addendum relies solely on what it describes as a commitment by Root Creek Water District to apply
26 techniques to offset the Project's groundwater use. (*Id.* at 7.) However, the source of this
27 "commitment," the party to whom the "commitment" was made, and the mechanism of enforcing the
28 "commitment," are all unidentified and unexamined by the EIR Addendum.

1 The true nature of the only “commitment” was the program set forth in the WSA. (See Ex. “G”
2 § 9.3) The WSA assumed the full reuse of the effluent, without regard to losses from percolation
3 ponds (because the ponds were to be lined). This commitment is in fact violated by the Project’s
4 request that the Board authorize a modification of this aspect of the WWTP design. Section 8.3 of the
5 WSA also discusses water conservation measures and quotes from the IMP. It states: “all wastewater
6 effluent shall be conjunctively reused within RCWD either as reclaimed water or for agricultural
7 irrigation”. This is a further commitment violated by the modification of this aspect of the WWTFs
8 originally assumed design.

9 The IMP states that a groundwater recharge program is being instituted to replace the 3,400
10 acre-feet of overdraft, on a five-year rolling average basis. (See Ex. “H” at 17.) The IMP does not
11 incorporate any commitment by Root Creek Water District to import 3,400 acre-feet of surface water,
12 annually, on a five-year rolling average basis, to address this existing overdraft. Instead, it states the
13 program will rely, to a substantial degree, on conjunctive reuse of the effluent. The conjunctive reuse
14 of the effluent is being substantially impacted by the use of percolation ponds, even during the phases
15 when there is some conjunctive reuse.

16 More importantly, page 29 of the IMP discusses the extent of commitment to surface water
17 imports in more detail. It states that a proposed in-lieu system will deliver approximately 3,304 acre-
18 feet of irrigation water annually. It further states, *“The commitment of the Project through combined
19 groundwater overdraft reduction programs is to perform 3,400 AF/year of recharge as measured on
20 a rolling five year-average basis, an amount adequate to eliminate the current groundwater deficit
21 within RCWD.”* (See Ex. “H” at 29.)

22 In limitation of that commitment, it further states *“There is no intent to fully-utilize these in-
23 lieu facilities every single year, and there is no commitment to increase the 3,400 AF/year
24 contribution from the combined groundwater overdraft reduction programs toward district-wide
25 overdraft even if subsequent study shows the estimated overdraft to have increased.”* (See Ex. “H” at
26 29.)

27 The Project’s design change will diminish the conjunctive reuse of effluent, and reduce this
28 source of recharge to the basin. There is no commitment by Root Creek Water District in the IMP, in

1 the WSA, in any mitigation measure, or otherwise, in favor of the County or any other public entity, to
2 make up for the loss to the basin of this source of recharge. The EIR Addendum states that this is a
3 commitment of the "Project." However, that was a commitment tied to design elements of the Project
4 that are now being proposed for modification.

5 During the April 16, 2015 Regional Board hearing, much was made about the contracts Root
6 Creek has with Paramount Land Company to deliver certain waters to Root Creek. However, there is
7 no commitment by Root Creek to deliver any of those waters to the environs of the Project. The IMP
8 states the following regarding the commitments to use of Paramount water to benefit the aquifer: "*It is
9 again noted that the back-up water supply is intended as a fail-safe, and under ideal or average
10 conditions will not have to be used to maintain the required rolling-average water balance. It has
11 been put in place only to assure stakeholders that the project's water supply is not at risk in even a
12 series of dry and very-dry years.*" It is clearly not an enforceable commitment or mitigation measure
13 to use such waters.

14 There is no enforceable mitigation measure or binding commitment by Root Creek, to make up
15 for losses resulting from the change to percolation ponds. The EIR Addendum is faulty in its reliance
16 on commitments that do not exist and which are not enforceable.

17 **VIII. RESERVATION OF RIGHT TO AMEND OR SUPPLEMENT THIS PETITION**

18 Petitioner reserves the right to amend and/or supplement this petition upon receipt of the
19 Regional Board's Administrative Record.

20 **IX. STATEMENT THAT THE SUBSTANTIVE ISSUES/OBJECTIONS WERE RAISED
21 BEFORE THE REGIONAL BOARD**

22 All issues and objections raised in this petition were raised before the Regional Board through
23 multiple items of written comment and in-person testimony at the December 5, 2014 and April 16,
24 2015 hearings on this matter. (True and correct copies of all correspondence provided to the Regional
25 Board on behalf of Petitioner are attached hereto as Exhibit "E.")

26 **X. LIST OF PERSONS OTHER THAN THE PETITIONER KNOWN BY THE
27 REGIONAL BOARD TO HAVE AN INTEREST IN THE SUBJECT MATTER OF
28 THE PETITION:**

A list of all persons having an interest in the subject matter of the petition that are known to

1 Petitioner is included on page two (2) of the April 2, 2015 Agenda Notification for the April 16, 2015
2 Regional Board meeting. (A true and correct copy of this Agenda Notification is attached hereto as
3 "Exhibit J.")

4 **XI. STATEMENT OF SERVICE OF PETITION**

5 A true and correct copy of this petition was sent electronically to Pamela Creedon, Executive
6 Officer, Regional Water Quality Control Board, at pcreedon@waterboards.ca.gov. A true and correct
7 copy of this petition was also sent to the discharger, Root Creek Water District, c/o Provost Pritchard,
8 286 West Cromwell Avenue, Fresno, CA 93711. Finally, a true and correct copy of this petition was
9 served via email to waterqualitypetition@waterboards.ca.gov in accordance with Cal. Code Regs., tit.
10 23, § 2050, subdivision (b).

11 **XII. REQUEST FOR HEARING**

12 Petitioner requests that the State Board conduct a hearing on this matter so that evidence may
13 be marshaled and presented concerning the lack of substantial evidence in support of the WDR Order
14 and its CEQA compliance.

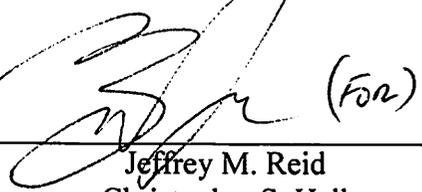
15 **XIII. CONCLUSION**

16 For the foregoing reasons, petitioner respectfully submits that the issuance of the WDR Order
17 was improper, inappropriate, unlawful, and not supported by substantial evidence. Petitioner
18 respectfully requests that the state board grant this petition, review the regional board's action in
19 issuing the WDR Order, and ultimately set the WDR Order aside with instructions for further
20 environmental impact analysis.

21 Dated: May 15, 2015

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

22
23
24 By: _____

 (For)

Jeffrey M. Reid
Christopher S. Hall
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