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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SONOMA**

13 O.W.L. FOUNDATION, a non-profit  
14 organization, KATHLEEN HAYNIE, an  
15 individual, JOAN McLAIN, an individual, and  
16 CRAIG ROTH, an individual,

17 Petitioners and Plaintiffs,

18 v.

19 CITY OF ROHNERT PARK, CITY COUNCIL  
20 FOR THE CITY OF ROHNERT PARK, and  
21 DOES 1 through 25, inclusive,

22 Respondents and Defendants.

Case No.: SCV 236309

VERIFIED FIRST AMENDED PETITION  
FOR WRIT OF MANDAMUS AND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

[FILED AS A MATTER OF RIGHT  
PURSUANT TO CODE OF CIVIL  
PROCEDURE §472 – NO RESPONSIVE  
PLEADINGS ON FILE]

1 **I. INTRODUCTORY STATEMENT**

2 1. Water is our most precious natural resource. Our ever growing  
3 population and the increasing threats to water quality posed by that growth heighten the need  
4 to carefully manage our water resources. That management should take place at the local  
5 level since the water demands and supplies of each community are truly unique.

6 2. Such a careful and prudent assessment of a community's water demands  
7 and supplies is the overriding objective of a new State statute commonly known as SB 610.  
8 This new law requires local agencies to assess its water supplies and demands for the next  
9 twenty years, during both dry and wet water years, *before* approving significant new  
10 development projects. Respondents and defendants City of Rohnert Park ("City") and its  
11 City Council ("Council") failed to perform that critical assessment when it adopted  
12 Resolution No. 2005-24 (the "WSA Resolution"). That resolution approved a "water supply  
13 assessment" that turns a blind eye to the City's ever worsening water supply. In addition to  
14 the egregious act of planning for growth based on water that does not exist, the City  
15 recklessly embraced the WSA Resolution as part of its grandiose plan to annex at least five  
16 new development projects into City territory. These projects could bring over 4,000 new  
17 residential units and almost 2 million square feet of new commercial uses, and the City's  
18 General Plan calls for even more growth.

19 3. At the very least one would assume that the City would develop a  
20 management plan for its water resources if it plans to so dramatically increase its territory  
21 and population. Indeed, that is the exact recommendation recently made by the Grand Jury  
22 for the entire County of Sonoma. Yet, the City and the Council failed to heed the call of the  
23 Grand Jury, failed to comply with the mandate of SB 610, and failed to protect our most  
24 valuable natural resource -- water. Accordingly, petitioners and plaintiffs O.W.L.  
25 Foundation ("O.W.L."), Kathleen Haynie, Joan McLain and Craig Roth (collectively, the  
26 "Plaintiffs") are forced to bring this lawsuit.

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1 **II. THE PARTIES**

2 4. O.W.L. is a non-profit organization comprised of residents of the City  
3 as well as the County of Sonoma (“County”). O.W.L.’s mission is to secure the adoption of  
4 a program that ensures sustainable management of the water resources in Sonoma County.<sup>1</sup>  
5 Plaintiffs Haynie, McLain, Roth and O.W.L.’s Board members and donors own land in the  
6 County and/or the City, pay property taxes, pay water assessments charged by the City  
7 and/or other water purveyors, own and operate groundwater wells, and/or have lost  
8 groundwater wells due to declining water levels in the groundwater basin at issue herein.

9 5. Plaintiffs are informed and believe, and on that basis allege, that the  
10 City is a municipal corporation located in the County of Sonoma, and is organized and exists  
11 under the laws of the State of California. The Council is the elected body which governs the  
12 City.

13 6. Plaintiffs are currently unaware of the true names and capacities of the  
14 defendants and respondents named herein as Does 1 through 25, inclusive, and therefore sue  
15 those parties by fictitious names. Plaintiffs will seek leave to amend this petition and  
16 complaint to state the true names and capacities of such fictitiously named parties when the  
17 same has been ascertained. Plaintiffs are informed and believe, and on that basis allege, that  
18 each of the defendants and respondents designated as a Doe is legally responsible for the  
19 events, happenings and actions alleged herein. (The City, City Council and Does 1 through  
20 25 shall be referred to herein collectively as the “Defendants”.)

21 7. Plaintiffs are informed and believe, and on that basis alleges, that at all  
22 times mentioned herein, each of the Defendants was the agent and/or representative of one or  
23 more of the other Defendants, and, as such, was acting within the course, scope and authority  
24 of such agency, and that each Defendant has ratified, authorized or otherwise approved the  
25 acts of such agents and/or representatives.

26  
27  
28 <sup>1</sup> O.W.L. is an acronym standing for Open Space, Water Resource Protection, and Land Use, in Sonoma County.

1 **III. THE ENACTMENT OF SENATE BILL 610 AND ITS MANDATORY**  
2 **REQUIREMENTS**

3 8. One of the causes of action alleged in this Petition arises under Senate  
4 Bill 610 (“SB 610”) (Cal. Water Code Sections 10910 - 10912). The State Legislature  
5 enacted SB 610 effective as of January 1, 2002. Prior to that legislative act, a number of  
6 California appellate courts had rendered decisions invalidating environmental impact reports  
7 (“EIRs”) prepared under the California Environmental Quality Act (Cal. Public Resources  
8 Code Sections 21000 et. seq.) due to inadequate analyses of impacts on local water supplies.  
9 In particular, the courts held that local agencies had failed to determine, prior to approving  
10 new development, whether a sufficient water supply would be available to meet the needs of  
11 all existing and future water users. In the words of one appellate court, “Thus, where land  
12 use planning determinations can be made on the basis of entitlement rather than real water,  
13 development can outpace the availability of water, leading to detrimental environmental  
14 consequences, excessive groundwater pumping, and pressure to develop additional water  
15 supplies.” (Planning and Conservation League v. Department of Water Resources, 83  
16 Cal.App.4<sup>th</sup> 892 (2000).)

17 9. In light of these judicial decisions, the Legislature enacted SB 610.  
18 Ensuring sustainable water resources is the driving objective of SB 610. That statute  
19 requires legal agencies, before approving certain development projects, to determine whether  
20 an adequate water supply will be available. In particular, SB 610 requires that the following  
21 information be provided in a “water supply assessment”:

22 (a) Whether the total projected water supplies, for normal, single  
23 dry, and multiple dry water years over a 20-year period, will meet the projected water  
24 demands associated with the proposed project, in addition to existing and planned future  
25 uses, including agricultural and manufacturing uses.

26 (b) Substantial evidence confirming the adequacy of the water  
27 supply, including evidence of water rights, water supply contracts, capital improvement  
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1 plans and budgets, permits and all necessary regulatory approvals.

2 (c) If groundwater is a source of water, additional requirements must  
3 be satisfied including:

4 (i) A description of the groundwater basin or basins from  
5 which the proposed project will be supplied. For basins that have not been adjudicated by a  
6 court, information must be supplied as to whether the basin is overdrafted or is projected to  
7 become overdrafted, and any efforts being undertaken to eliminate the long-term overdraft  
8 condition.

9 (ii) A detailed description and analysis of the amount and  
10 location of groundwater pumped by the public water system for the past five years from the  
11 groundwater basin from which the proposed project will be supplied.

12 (iii) A detailed description and analysis of the amount and  
13 location of groundwater that is projected to be pumped by the public water system.

14 (iv) An analysis of the sufficiency of the groundwater from the  
15 basin from which the proposed project will be supplied to meet the projected water demand  
16 associated with the proposed project.

17 10. In the instant action, there is no dispute that SB 610 applies to the City's  
18 actions. The dispute centers around the City's failure to comply with all of the mandatory  
19 requirements of SB 610.

20 **IV. THE UNIQUE NATURE OF CALIFORNIA GROUNDWATER LAW**

21 11. SB 610 imposes these additional requirements when groundwater is a  
22 source of the subject water supply because of the unique nature of California groundwater  
23 law. California is one of the few states in the country that do not impose a state-wide  
24 regulatory or permitting system on the production of groundwater. Thus, while groundwater  
25 is deemed a public resource owned by the State for the people, entities can acquire "water  
26 rights" to the use of groundwater based on common law. Under that body of common law,  
27 an entity's groundwater rights can be reduced by a court when the groundwater basin is in a  
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1 state of “overdraft”. According to the California Department of Water Resources (“DWR”),  
2 overdraft is defined as “the condition of a groundwater basin or subbasin in which the  
3 amount of water withdrawn by pumping exceeds the amount of water that recharges the  
4 basin over a period of years, during which the water supply conditions approximate average  
5 conditions. Overdraft can be characterized by groundwater levels that decline over a period  
6 of years and never fully recover, even in wet years. If overdraft continues for a number of  
7 years, significant adverse impacts may occur, including increased extraction costs, costs of  
8 well deepening or replacement, land subsidence, water quality degradation, and  
9 environmental impacts.”

10 12. The groundwater basin at issue in this case -- the South Santa Rosa  
11 Plain groundwater subbasin (“Basin”) -- is in an overdrafted condition.

12 13. An overdrafted condition can be alleviated through a variety of legal  
13 and institutional mechanisms. For example, a person possessing groundwater rights can file  
14 a complaint for a judicial adjudication, which would seek a judicial solution to the overdraft  
15 condition and a complete determination of all parties’ groundwater rights for future use.  
16 Such judicial proceedings are often time-consuming and costly.

17 14. Another legal mechanism available to local water agencies is the  
18 adoption of a groundwater management plan pursuant to another State statute commonly  
19 known as “AB 3030.” (Cal. Water Code Sections 10750 - 10755.) Such a management plan  
20 can eliminate the need for a judicial adjudication. The adoption of a groundwater  
21 management plan was expressly advocated by the Sonoma County Grand Jury in its report  
22 dated July 1, 2004. Yet, Defendants herein have repeatedly refused to adopt such a  
23 management plan. Compounding this problem, the only County-wide water agency, the  
24 Sonoma County Water Agency, has also refused to adopt any type of groundwater  
25 management plan.

26 15. Accordingly, the Basin herein is both overdrafted and unmanaged  
27 (whether judicially or statutorily). Such a groundwater basin cannot be relied upon to  
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1 provide a sustainable water supply for the City's tens of thousands of residents for the  
2 twenty-year period prescribed by SB 610.

3 **V. THE PROPOSED DEVELOPMENT PROJECTS THAT THE CITY SEEKS**  
4 **TO ANNEX**

5 16. The City is already one of the largest cities in the County, with over  
6 42,000 residents, and operates one of the largest municipal groundwater well fields in the  
7 County. Despite that size and recent growth, the City seeks to annex massive new  
8 development projects into the City's boundaries. For example, the following projects are  
9 proposed for annexation by the City:

10 (a) University District SPA -- The University District project  
11 consists of 20 parcels on approximately 300 acres. A Specific Plan Application has been  
12 submitted, which application requests 1610 residential units and approximately 250,000  
13 square feet of commercial land uses. The entire plan area has the potential for 1,610 units  
14 and 350,000 square feet of commercial space under the City's General Plan.

15 (b) Northeast SPA -- The Northeast project consists of 36 parcels on  
16 approximately 264 acres. A Specific Plan Application has been submitted covering 122  
17 acres and 11 of those parcels. The application requests 559 residential units. The entire plan  
18 area has the potential for 1085 units under the City's General Plan.

19 (c) Southeast SPA -- The Southeast project consists of two parcels  
20 on approximately 80 acres. A Specific Plan Application has been submitted, which requests  
21 499 residential units and 20,000 square feet of commercial use.

22 (d) Northwest SPA -- The Northwest project consists of  
23 approximately 170 acres. A Specific Plan Application has been submitted for the southern  
24 portion of this project covering approximately 102 acres on sixteen parcels. The application  
25 requests 495 residential units and 495,000 square feet of commercial/industrial use. The  
26 entire plan area has the potential for 900 units, 480,000 square feet of commercial space,  
27 260,000 square feet of office space and 560,000 square feet of industrial space under the  
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1 City's General Plan.

2 (e) Wilfred Dowdell SPA -- The Wilfred Dowdell project consists of  
3 approximately 25 acres, located between the existing City limits and the Northwest SPA.  
4 The future land uses include approximately 300,000 square feet commercial space.

5 17. These proposed development projects represent just the tip of the  
6 iceberg. As expressly stated in the City's General Plan of 2000, the City anticipates  
7 approving almost 4,500 new residential units, 5 million square feet of new commercial uses,  
8 and the annexation of over 1,000 acres of land into City territory.

9 18. Growth in the populace overlying the Basin is not limited to growth in  
10 the City. For example, the Graton Rancheria Indian tribe seeks to develop a massive casino  
11 complex just outside the City limits and plans to produce groundwater to serve that project.  
12 (Despite that tribe's plans to use groundwater that is much needed by existing City and  
13 County residents, the City still approved an agreement with this tribe whereby the City  
14 supports the project in exchange for millions of dollars from the tribe.) In addition the  
15 County recently approved the Canon Manor West project, which lies within the City's sphere  
16 of influence. This project would add hundreds of new homes, with the source of water being  
17 additional groundwater pumped from the Basin. Further, the City of Cotati and Sonoma  
18 State University anticipate significant expansion in the years to come, with, again, the source  
19 of water for that growth being groundwater.

20 **VI. EVENTS LEADING UP TO THE CITY'S ADOPTION OF A LEGALLY**  
21 **INADEQUATE WATER SUPPLY ASSESSMENT**

22 **A. Groundwater Supply**

23 19. Prior to the City's adoption of its Water Supply Assessment ("WSA")  
24 on January 25, 2005 for the aforementioned development projects, a number of studies were  
25 performed that analyzed the Basin. For example, in 1982, the California DWR, experts in  
26 the field of water resources, completed a detailed study that concluded that the amount of  
27 annual production of groundwater out of the Basin *equaled* the amount of annual recharge of  
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1 water back into the Basin. Yet, in the ensuing twenty years, groundwater production has  
2 significantly increased due to the water demands of a burgeoning population while the  
3 amount of annual recharge has, at best, remained constant. On the demand side, the City's  
4 groundwater production alone has increased over four-fold from 1982 to 2002 as compared  
5 to the study period examined in the DWR 1982 study. Indeed, in an earlier report prepared  
6 in 1979, DWR had already observed a "gradual lowering of water levels beneath the City of  
7 Rohnert Park." On the supply side, annual groundwater recharge has likely decreased since  
8 projects have been built over open space and natural recharge areas. In short, urbanization  
9 has increased the demand for groundwater while decreasing its supply.

10           20. Then in 2000, the City prepared an update to its overall General Plan.  
11 In connection with that endeavor, the City commissioned the preparation of an EIR by a  
12 consulting company called PES Environmental ("PES"). That analysis was based on a  
13 sophisticated computer model (called MODFLOW) developed by the U.S. Geological  
14 Survey (USGS). PES inputted a host of data into that computer model, and also drew upon  
15 prior studies performed for the Basin, including the study completed by DWR in 1982.  
16 Using that model, PES examined the recharge rate for a *larger* portion of the Basin than was  
17 examined in the WSA. Therefore, the recharge rate in the WSA study should be less than  
18 the rate calculated by PES.

19           21. PES concluded that the natural recharge rate is 1,792 acre feet per year  
20 ("afy"). Yet the total amount groundwater pumping just by the City alone was 2.5 times  
21 greater than that recharge rate, with overall cumulative pumping in the Basin being even  
22 greater. Given that significant imbalance between annual recharge and annual production,  
23 PES concluded that the basin was in overdraft. Accordingly, in its written responses to  
24 comments on that EIR, the City acknowledged that groundwater production by the City  
25 would continue to outstrip natural recharge until the City receives -- if ever -- its full  
26 allotment of water from the Sonoma County Water Agency ("SCWA"). Indeed, recognizing  
27 this severe groundwater condition, the City's General Plan called for the virtual elimination  
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1 of groundwater pumping by the City as of 2010, with additional water from SCWA serving  
2 as the replacement of that supply of groundwater. Yet, as detailed later below, the City  
3 cannot plan on receiving that additional SCWA water. Consequently, the Basin will remain  
4 in a continuing state of overdraft.

5           22. The conclusions so meticulously reached by PES were so significant  
6 that litigation ensued, in an action entitled South County Resource Preservation Committee,  
7 et al. v. City of Rohnert Park, et al., Case No. 224976 (the “General Plan Lawsuit”). Judge  
8 Antolini presided over that General Plan Lawsuit. After extensive briefing by the parties to  
9 that action, Judge Antolini presided over the entry of a Stipulated Judgment in 2002. A key  
10 term of that Judgment provides that:

11           “The City shall not approve any discretionary project outside of  
12 the City boundaries whose net consumptive water use impact on  
13 City’s water supply will contribute to the City exceeding an  
14 average annual groundwater pumping rate of 2.3 mgd from  
15 municipal wells and any private wells permitted by the City  
16 subsequent to the entry of Judgment. This provision shall not be  
17 interpreted as a determination or an agreement that pumping at  
18 2.3 mgd at any point in time is, or is not, safe yield.”

19           **B. SCWA Water Supply**

20           23. Groundwater from the Basin is not the only water source in doubt in this  
21 action. The other water source available to the County is imported water delivered by the  
22 SCWA. SCWA diverts water from the Russian River and delivers that water to the City and  
23 seven other entities (collectively known as “Contractors”) and a number of other entities,  
24 including water agencies *outside Sonoma County*. With respect to just the Contractors,  
25 SCWA supplies water to those entities pursuant to written supply contracts, which establish  
26 the maximum amount of water that each Contractor can receive. The governing contract  
27 binding all these entities is the Eleventh Amended Agreement For Water Supply. Under that  
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1 contract, the City’s maximum annual entitlement to SCWA water is 7,500 afy.

2 24. However, SCWA’s existing water delivery system and related  
3 infrastructure is not capable of delivering that amount of water to the City. As SCWA has  
4 stated in its Urban Water Management Plan, until new infrastructure is built, “deliveries by  
5 the Agency to its water contractors will be limited to the capacity of the transmission  
6 system.” Accordingly, SCWA and the Contractors entered into the Memorandum of  
7 Understanding Regarding Water Transmission System Capacity Allocation During  
8 Temporary Impairment (the “Impairment MOU”). That Impairment MOU effectively limits  
9 the City’s maximum entitlement of SCWA water to 6,476 afy.

10 25. Perhaps recognizing that shortfall in its water supply, SCWA installed  
11 three “emergency” groundwater production wells in the Basin over 25 years ago. Since 1998  
12 SCWA has almost continuously pumped groundwater from these wells, and at an alarmingly  
13 increasing rate. For example, from 1998 to Fall 2004, SCWA increased its groundwater  
14 pumping from 1,879 afy to 5,051 afy from those three wells.

15 26. SCWA has proposed a project (commonly called the “WSTSP”) that  
16 would increase the delivery capacity of its system and increase its diversion of water from  
17 the Russian River. However, in May 2003, an appellate court invalidated the EIR prepared  
18 by SCWA for that project. In that decision, the Court of Appeal held that SCWA’s EIR  
19 failed to analyze the possibility that PG&E may divert *less* water from the Eel River to the  
20 Russian River due to PG&E’s proposed operational change at its hydroelectric facility. If  
21 PG&E diverts less water from the Eel River, then less water is diverted to the Russian River,  
22 and there is less water in the Russian River for SCWA to divert.

23 27. The Eel River decision led the General Manager of SCWA to issue a  
24 letter dated August 11, 2003 to all Contractors. In that letter, the General Manager stated,

25 “With the Court of Appeal decision in *Friends of the Eel River*  
26 litigation, the Agency cannot implement the WSTSP at this time.

27 Thus, it is inappropriate for water suppliers relying on water  
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1 diverted under the Agency’s water rights to anticipate water  
2 deliveries based upon diversions of 101,000 afy, or to rely on the  
3 delivery estimates in the Agency’s Urban Water Management  
4 Plan 2000. . . .”

5 28. Three key developments loom for the Russian River, which could  
6 dramatically decrease the amount of water available to SCWA. First, the Federal Energy  
7 Regulation Commission (FERC) recently approved PG&E’s request to divert 15% less water  
8 from the Eel River. Various parties have filed lawsuits challenging FERC’s decision,  
9 including one lawsuit seeking a *greater* reduction in diversions from the Eel River.  
10 Therefore, the amount of reduced flow from the Eel River to the Russian River is still  
11 uncertain.

12 29. Second, the State Water Resource Control Board recently approved  
13 reductions from Lake Mendocino to the Russian River in July 2004. That reduction was  
14 necessitated by the need to “slow down” the flow of water through the River to protect fish.  
15 That reduction in flow, however, could significantly reduce the amount of Russian River  
16 water available for human consumption.

17 30. Finally, the regulated flows for the Russian River are also being  
18 scrutinized by various federal and state agencies involved in a “Section 7” consultation  
19 process. Under that process, a variety of biological issues are examined and a “Biological  
20 Assessment” must be produced, which may take years to complete.

21 **VII. THE CITY’S ADOPTION OF A LEGALLY INVALID WSA**

22 31. Against this backdrop of significant events affecting the City’s long-  
23 term water supply, the City retained a consultant to prepare the WSA. Curiously, however,  
24 the City did not retain PES, the consultant who prepared the water supply study for the  
25 General Plan EIR. Nor did the City’s new consultant use the federally-approved computer  
26 model in preparing the WSA, even though the City’s prior consultant (PES) used that type of  
27 computer model for its water supply study. And perhaps for good reason, given the  
28

1 dramatically differing conclusions reached by the City's new consultant in the WSA.

2           32. In late October 2004, the City released its draft of the WSA for public  
3 review. That draft clearly failed to satisfy the mandatory requirements of SB 610. Among  
4 other deficiencies, the draft WSA failed to comply with various aspects of DWR's  
5 Guidelines for compliance with SB 610, including defining the boundaries of the  
6 groundwater basin, using readily available information concerning other producers in the  
7 Basin, and assessing past and future water demands for the subject region. In addition, the  
8 draft WSA relies on highly selective presentation of technical data, including inadequate  
9 description and analysis of hydrological barriers, groundwater levels, and well production  
10 data. In short, the draft WSA sought to re-write hydrological history, history confirmed in a  
11 host of prior reports on the basin, including but not limited to DWR's reports of 1979 and  
12 1982, the PES study in 2000, and many others. In light of those legal and technical defects,  
13 O.W.L. submitted a letter to the City dated November 19, 2004 that detailed many of those  
14 deficiencies. (A true and correct copy of that letter, excluding exhibits, is attached hereto as  
15 Exhibit A.) The City scheduled a public hearing on the draft WSA for November 23, 2004.

16           33. Apparently recognizing the deficiencies in the draft WSA, the City and  
17 its new consultant submitted a new document entitled "Technical Memorandum" at the City  
18 Council's hearing on November 23, 2004. The public had not had an opportunity to review  
19 this new document before that hearing. The Technical Memorandum provided new  
20 information and analyses. For example, in the Technical Memorandum, the City's new  
21 consultant desperately tries to prove that the Basin is not in overdraft and that PES's prior  
22 conclusion that the Basin is in overdraft was incorrect. In light of all this new information,  
23 the Council continued its decision on the WSA to its meeting of January 25, 2005.

24           34. After the November 23<sup>rd</sup> hearing, O.W.L. had the opportunity to review  
25 the Technical Memorandum. Like the draft WSA, the Technical Memorandum still  
26 contained erroneous analyses and conclusions, and the WSA combined with the Technical  
27 Memorandum still failed to comply with the mandatory requirements of SB 610.

1 Accordingly, O.W.L. submitted another comment letter to the City dated January 19, 2005  
2 that detailed the deficiencies in the Technical Memorandum (a true and correct copy of  
3 which is attached hereto as Exhibit B).

4           35.     Thereafter, virtually at the eleventh hour of these proceedings, the City  
5 issued its “final” WSA. That version of the WSA was dramatically different from the draft  
6 WSA, in the sense that the final WSA *doubled* the length of the text of the WSA and added  
7 dozens new informational tables and figures. In short, the Final WSA added a substantial  
8 amount of new information never before made available to the public. Despite the addition  
9 of that new information, the City took various actions that deprived the public of a full and  
10 adequate opportunity to provide comment on the final WSA.

11           36.     Despite depriving the public of its right to effectively participate in the  
12 process, the City Council proceeded to adopt the final WSA at its meeting of January 25,  
13 2005. The City Council’s decision flies in the face of protests received from:

14                     •     Landowners who lost their groundwater production wells due to  
15 the City’s increased groundwater pumping.

16                     •     The Sonoma County Water Coalition, a coalition of over twenty  
17 community and environmental organizations and groups throughout the County seeking  
18 protection of our vital water resources.

19                     •     The California Regional Water Quality Control Board (“Regional  
20 Board”), which stated in a letter to the City that it found the WSA to be inadequate (a copy  
21 of which is attached hereto as Exhibit C<sup>2</sup>). One of the Regional Board’s primary concerns  
22 focuses on the adverse consequences of overpumping by the City in the Basin, namely, the  
23 withdrawal of water from the adjacent groundwater basin and the potential negative effect on  
24 Lichau Creek.

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26 \_\_\_\_\_  
27 <sup>2</sup> A copy of the incorrect California Regional Water Quality Control Board letter was  
28 inadvertently attached to the original complaint. The correct letter is now attached as Exhibit C.

1 **VIII. THE CITY’S REFUSAL TO PUBLICALLY PRODUCE THE PES DATA**

2 37. Early on in this process, it became evident that the findings by PES of  
3 an overdraft condition in the Basin would be critical. Accordingly, O.W.L. submitted a  
4 lawful request to the City under the Public Records Act (“PRA”) (Cal. Govt. Code Sections  
5 6250, et seq.) for copies of the groundwater flow model that was developed and calibrated by  
6 PES, as well as copies of all input and output files that were generated from the use of this  
7 model. These documents are an important step in determining the legitimacy of the City’s  
8 decision to disregard the PES findings, and, instead, to rely on Luhdorff & Scalmanini, a  
9 new consultant (“Consultant”) hired by the City to draft its WSA.

10 38. PES rendered its finding that the basin was in overdraft by entering  
11 “input” data into the USGS groundwater model. This model is not proprietary, and may be  
12 downloaded free of charge directly from the USGS website. Thus, the model itself has no  
13 predetermined outcome – it essentially acts as a shell. The results of running the model  
14 depend on the data and assumptions that are used as inputs. In this case, the input data were  
15 based on a number of sources, including groundwater pumping data provided to PES by the  
16 City. Without both the raw data and the model input data, it would be impossible for an  
17 outside observer to accurately confirm or deny that the basin was overdrafted. This  
18 presumably explains why the City now refuses to produce this input data responsive to  
19 O.W.L.’s PRA request.

20 39. The City’s sole justification for its decision is that the City did not  
21 physically possess the input data, but, rather, PES did. (Copies of the relevant  
22 correspondence between O.W.L. and the City are included as part of Exhibit B hereto.) The  
23 logic of this response breaks down, however, after review of the City’s contract with PES (a  
24 true and correct copy of which is attached hereto as Exhibit D). In that contract, it  
25 specifically provides: “[T]itle to all plans, specifications, maps, estimates, reports,  
26 manuscripts, drawings, descriptions and other final work products compiled by the  
27 consultant under the Agreement shall be vested in the City.” Further, the contract also  
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1 provides: “[B]asic survey notes and sketches, charts, computations, and other data prepared  
2 or obtained under the Agreement shall be made available, upon request, to the City without  
3 restriction or limitations on their use.” Therefore, regardless whether the City actually  
4 physically possesses the input data, it does hold title to this data and thus should be required  
5 to produce it.

6           40. In addition, the City’s argument that it does not have possession of the  
7 input data is belied by its own Consultant’s findings in the City’s WSA. Although it was  
8 PES, and not Luhdorff & Scalmanini, which ran the groundwater model, Luhdorff &  
9 Scalmanini were able to make very specific conclusions in the WSA disputing the accuracy  
10 of the PES findings. Specifically, the Consultant claims that the PES model was bounded by  
11 no-flow boundaries with the exception of a general head boundary along the northwestern  
12 edge of the model. In addition, the Consultant was able to point to three specific recharge  
13 zones and the simulated recharge rates of each of these zones. These very specific technical  
14 details about model input were not provided in the City’s EIR and thus, were not previously  
15 accessible to O.W.L. Rather, it was not until five years later, when the City was trying to  
16 find some evidence indicating that the Basin was not actually in overdraft, that these very  
17 specific technical conclusions were made.

18           41. This lends support to the argument that the Consultant could only obtain  
19 this information from PES’ actual input and output files. As stated previously, the  
20 groundwater model itself acts only as a shell; without the input data it has no output.  
21 Therefore, in order for the City’s Consultant to come up with these sorts of findings – which  
22 made very fine quantitative distinctions between the Consultant’s study and PES’ study – the  
23 Consultant must have had access to the data PES inputted into the groundwater model.  
24 Indeed, the City’s Consultant specifically cites as one of its sources: “Pogoncheff, personal  
25 communication, 2004”. Since Nicholas Pogoncheff was employed by PES as a Hydrologist,  
26 it is difficult to ascertain how the City can claim that neither it, nor its consultant, has access  
27 to PES’ input and output data. In its PRA request, O.W.L. simply asks the City to provide  
28



1 this data.

2 42. The City has also refused to provide any output files generated from  
3 PES. Again, the City makes the untenable argument that it is unable to produce these files  
4 since PES, and not the City, possesses the data. However, the City itself, in its draft EIR of  
5 2000, conceded that PES calibrated its groundwater flow model with, among other things,  
6 both pumpage and historic groundwater elevations. Calibration is necessary in order to  
7 ensure that the output data is consistent with the historic groundwater elevations. Thus, this  
8 calibration process is an important “reality check” in order to verify that the recharge  
9 estimate provided by the groundwater model is accurate. In addition to the reference in the  
10 draft EIR, the City’s Consultant references the calibration conducted on the model in the  
11 WSA. However, as was the case with the input data, the WSA refers to different output data  
12 used for calibration than that used in the City’s EIR. Therefore, both the City and its  
13 Consultant must have had access to the output data PES used to calibrate the model.

14 43. Thus, the City seeks to hide from public scrutiny the very information  
15 that formed the basis of its conclusion of an overdraft condition back in 2000. The reason for  
16 that seems to be that the output results of that data contradict the City’s 2004 conclusion that  
17 no overdraft condition exists or has ever existed.

### 18 **FIRST CAUSE OF ACTION**

#### 19 **(Violation Of, And Failure To Comply With, SB 610 Against All Defendants)**

20 44. Plaintiffs incorporate by this reference, and thereby reallege, all of the  
21 matters contained in paragraphs 1 through 43, above.

22 45. In adopting the WSA Resolution and approving the WSA, the  
23 Defendants violated and failed to comply with the mandatory requirements of SB 610.  
24 Among other deficiencies, the WSA:

25 (a) Failed to properly assess the sufficiency of groundwater as a  
26 water supply for the City;

27 (b) Failed to properly assess the sufficiency of imported water

1 delivered by SCWA as a water supply for the City;

2 (c) Failed to properly assess the sufficiency of additional recycled  
3 water as a water supply from the City;

4 (d) Failed to properly determine the water demands for the City's  
5 existing residents and future residents; and

6 (e) Was adopted without providing the public with an adequate  
7 opportunity to review and comment on the final WSA.

8 46. In light of these legal defects and others in the WSA, the Defendants'  
9 decision to adopt the WSA Resolution and approve the WSA is not supported by substantial  
10 evidence. In addition, the Defendants' decision to adopt the WSA Resolution and approve  
11 the WSA constitutes a prejudicial abuse of discretion since they failed to proceed in the  
12 manner required by law.

13 47. Plaintiffs have exhausted all administrative remedies available to them.

14 48. Plaintiffs have no plain, speedy or adequate remedy at law other than  
15 the relief sought herein, including the issuance by this Court of a writ of mandate pursuant to  
16 C.C.P. Sections 1084 et. seq. that requires the City to vacate and rescind its approval of the  
17 WSA Resolution and the WSA.

18 49. Plaintiffs have incurred, and will continue to incur, attorneys' fees and  
19 costs as a result of these proceedings in amounts that cannot yet be ascertained. Plaintiffs  
20 seek recovery of such fees and costs pursuant to California Code of Civil Procedure Section  
21 1021.5 and all other applicable laws.

22 **SECOND CAUSE OF ACTION**

23 **(Declaratory Relief Against All Defendants)**

24 50. Plaintiffs incorporate by this reference, and thereby reallege, all of the  
25 matters contained in paragraphs 1 through 49, above.

26 51. An actual and justiciable dispute and controversy has arisen and exists  
27 between Plaintiffs and the Defendants, in that Plaintiffs contend, and the Defendants  
28

1 maintain to the contrary, that the WSA:

2 (a) Failed to properly assess the sufficiency of groundwater as a  
3 water supply for the City;

4 (b) Failed to properly assess the sufficiency of imported water  
5 delivered by SCWA as a water supply for the City;

6 (c) Failed to properly assess the sufficiency of additional recycled  
7 water as a water supply from the City;

8 (d) Failed to properly determine the water demands for the City's  
9 existing residents and future residents.

10 52. A declaration by this Court concerning the legal adequacy of the WSA  
11 and the Defendants' obligations thereto under SB 610 is both appropriate and necessary at  
12 this time. In particular, absent a declaration or other appropriate order from this Court, the  
13 WSA will be relied upon in the avalanche of proposed development projects to be considered  
14 for annexation by the Defendants. Such an outcome may lead to multiple legal proceedings,  
15 inconsistent rulings, and contradictory applications of SB 610.

16 **THIRD CAUSE OF ACTION**

17 **(Violation Of, And Failure To Comply With, Public Records Act**  
18 **Against All Defendants Alleged By Plaintiff O.W.L.)**

19 53. O.W.L. incorporates by this reference, and thereby realleges, all of the  
20 matters contained in paragraphs 1 through 52, above.

21 54. O.W.L. made a valid request to the City under the Public Records Act in  
22 a letter dated July 2, 2004 (the "PRA Request") for copies of documents relating to the PES  
23 groundwater study, including input data used by PES to input into the computer model, as  
24 well as output data. O.W.L. renewed that request in its letter to the Council dated January  
25 19, 2005.

26 55. Defendants violated and failed to comply with the mandatory  
27 requirements of the PRA, in that the City failed, and repeatedly refuses, to produce the PES  
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1 documents to O.W.L. The City's failure to do so is particularly egregious since (a) the  
2 City's Contract with PES specifically vests title in any and all final work product in the City  
3 and (b) the City's new Consultant apparently had access to the PES data when it prepared the  
4 WSA. Further, the WSA relies on information apparently provided in *verbal*  
5 communications between PES and the consultant who prepared the WSA.

6 56. Accordingly, O.W.L. has no adequate remedy other than an injunction  
7 from this Court ordering the Defendants to produce all documents described in O.W.L.'s  
8 PRA Request, as described in paragraph 48 above, that are in the legal possession, custody  
9 and control of the Defendants and its agents, including but not limited to PES.

10 57. This cause of action arises out of facts and circumstances related and  
11 substantially similar to the fact and circumstances underlying the First and Second Cause of  
12 Action alleged herein.

13 58. O.W.L. has incurred, and will continue to incur, attorneys' fees and  
14 costs as a result of these proceedings in amounts that cannot yet be ascertained. O.W.L.  
15 seeks recovery of such fees and costs pursuant to California Government Code Section 6259  
16 and all other applicable laws.

### 17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray that:

#### 19 On First Cause of Action

20 1. The Court issue a peremptory writ of mandating commanding the  
21 Defendants:

22 (a) To vacate and rescind the WSA Resolution and associated  
23 approval of the WSA.

24 (b) To fully comply with the mandatory requirements of SB 610 in  
25 preparing and approving any future water supply assessment.

26 2. The Court issue an award of attorneys' fees and costs to Plaintiffs; and

27 3. The Court grant any other relief to Plaintiffs that the Court deems just  
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1 and equitable.

2 On Second Cause of Action

3 1. The Court issue a judicial declaration consistent with Plaintiffs'  
4 allegations set forth herein.

5 2. The Court issue an award of attorneys' fees and costs to Plaintiffs; and

6 3. The Court grant any other relief to Plaintiffs that the Court deems just  
7 and equitable.

8 WHEREFORE, Plaintiff O.W.L. prays, separately for itself, that:

9 On Third Cause of Action

10 1. The Court issue an injunction against the Defendants requiring them to  
11 produce to O.W.L. all documents responsive to O.W.L.'s PRA Request that are in the legal  
12 possession, custody and control of the Defendants and its agents, including but not limited to  
13 PES.

14 2. The Court issue an award of attorneys' fees and costs to O.W.L.; and

15 3. The Court grant any other relief to O.W.L. that the Court deems just and  
16 equitable.

17 DATED: July 22, 2005

18 EDWARD J. CASEY  
19 **WESTON, BENSHOOF, ROCHEFORT,**  
20 **RUBALCAVA & MacCUIISH LLP**

21 \_\_\_\_\_  
22 Edward J. Casey  
23 Attorneys for Petitioners and Plaintiffs

1 **VERIFICATION**

2 I, H.R. Downs, declare as follows:

3 I am the President of the O.W.L. Foundation (“O.W.L.”) in the within action  
4 and make this verification on its behalf.

5 I have read the foregoing VERIFIED FIRST AMENDED PETITION FOR  
6 WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
7 RELIEF and know the contents thereof; the same is true of my own knowledge, except as to  
8 matters therein stated on information or belief; and as to such other matters I believe them to  
9 be true.

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

12 Executed this 22<sup>nd</sup> day of July, 2005, at Penngrove, California.

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16 H.R. Downs  
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