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Attorneys for Plaintiffs

Clean Water Fund and
Association of Irrigated Residents

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

CLEAN WATER FUND and ASSOCIATION
OF IRRIGATED RESIDENTS,

Plaintiffs,

vs.

VALLEY WATER MANAGEMENT
COMPANY,

Defendant.

Case No.:BCV-19-101750

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES, AND
OTHER RELIEF UNDER HEALTH AND
SAFETY CODE SECTION 25249.5, et seq
(PROPOSITION 65)**

1 Plaintiffs CLEAN WATER FUND (“CWF”) and ASSOCIATION OF IRRITATED
2 RESIDENTS (“AIR”) (collectively, “Plaintiffs”) hereby allege the following on information and
3 belief:

4 **INTRODUCTION**

5 1. VALLEY WATER MANAGEMENT COMPANY (“VWMC” or “Defendant”),
6 formerly known as Valley Waste Disposal Company, owns and operates oil and gas wastewater
7 processing and disposal facilities, in or near the Cymric Area and Belgian Anticline and McKittrick
8 Oil Fields near the city of McKittrick in Kern County, California. These facilities are known as the
9 McKittrick 1 (Township 29S, Range 22E, Section 19; Mount Diablo Base & Meridian; Lat./Long.
10 35.389301, -119.649902) and the McKittrick 1-3 (Township 29S, Range 22E, Section 19; Mount
11 Diablo Base & Meridian; Lat./Long. 35.389301, -119.649902) (collectively, “Facility”).

12 2. Information available to Plaintiffs indicates that the Defendant has been and
13 continues discharging, releasing, or depositing produced water and/or wastewater from oil and gas
14 production operations at, into, onto, and/or near the Facility. This wastewater contains significant
15 amounts of chemicals listed under The Safe Drinking Water and Toxic Enforcement Act of 1986
16 (“Proposition 65”) and is not in compliance with all applicable laws, regulations, permits,
17 requirements, and orders. The violations alleged herein are so egregious that they have resulted in a
18 plume of polluted underground water that has migrated laterally for miles from the Facility,
19 endangering people, beneficial uses including municipal and agricultural water supplies, and the
20 environment.

21 3. In keeping with their public interest missions, and in the public interest, Plaintiffs
22 bring this suit to enjoin Defendant from violating Proposition 65.

23 **PARTIES**

24 **PLAINTIFFS**

25 4. Plaintiff CLEAN WATER FUND is a nonprofit corporation dedicated to ensuring
26 safe, clean, and affordable drinking water; preventing health-threatening pollution, and creating
27 environmentally safe jobs and businesses. Andrew Grinberg is the National Campaigns Special
28

1 Projects Manager, and is the responsible individual within CWF. CWF brings this action in the public
2 interest pursuant to Health & Safety Code § 25249.7, subd. (d).

3 5. Plaintiff ASSOCIATION OF IRRITATED RESIDENTS is a nonprofit corporation
4 dedicated to advocating for air quality and environmental health and justice in the San Joaquin Valley,
5 including preventing pollution of groundwater. Tom Frantz is the President and responsible person
6 within AIR. AIR is located at 29389 Fresno Avenue, Shafter, California 93263. AIR brings this action
7 in the public interest, pursuant to Health & Safety Code § 25249.7, subd. (d).

8 6. Defendant's failure to comply with the requirements of Proposition 65 include, but not
9 limited to, Defendant's discharge of polluted waste, storm, produced, and other waters from oil and
10 gas operations onto and into the groundwaters of the Tulare Lake Basin.

11 7. Together, Plaintiffs bring this action in the public interest, pursuant to Health & Safety
12 Code § 25249.7, subd. (d).

13 **DEFENDANT**

14 8. Plaintiffs are informed and believe, and thereon allege, that VALLEY WATER
15 MANAGEMENT COMPANY ("VWMC" or "Defendant"), formerly known as Valley Waste
16 Disposal Company, owns and operates oil and gas wastewater processing and disposal facilities,
17 including the Facility, in or near the Cymric Area and Belgian Anticline and McKittrick Oil Fields
18 near the city of McKittrick in Kern County. Defendant is a 501(c)(4) non-profit organization located
19 at 7500 Meany Avenue, Bakersfield, California 93308.

20 9. Defendant's agent for service of process is Jason Meaders, whose address is 7500
21 Meany Ave., Bakersfield, CA 93308.

22 10. Defendant is a "person[s] in the course of doing business" as defined in Health &
23 Safety Code Section 25249.11.

24 11. Plaintiffs are informed and believe, and thereon allege, that Defendant reported
25 \$7,928,612 in revenue, \$6,863,627 in expenses, and net assets of \$9,515,040 in 2017.

26 12. Plaintiffs are informed and believe, and thereon allege, that Defendant reported
27 fourteen employees in 2017.

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1 cancer or reproductive toxicity into water or onto or into land
2 where such chemical passes or probably will pass into any
3 source of drinking water

4 22. Proposition 65 requires the State to publish a list of chemicals known to cause cancer
5 or birth defects or other reproductive harm. (Health and Safety Code § 25249.8.) This list, which must
6 be updated at least once a year, has grown to include over 800 chemicals since it was first published
7 in 1987.

8 23. Under Proposition 65, a “source of drinking water” is defined as a present source of
9 drinking water or water that is identified in a water quality control plan as being suitable for domestic
10 or municipal uses. (Health & Safety Code § 25249.11(d).) Moreover, “water” is defined to include
11 both surface and groundwater. (27 C.C.R. § 25102(w).) The State Water Resources Control Board
12 Resolution No. 88-63 states that “[a]ll surface and ground waters of the State are considered to be
13 suitable, or potentially suitable, for municipal or domestic water supply and should be so designated
14 by the Regional Boards.”

15 24. Waste Discharge Requirements (“WDRs”) Resolution No. 69-199, adopted by the
16 Central Valley Water Board on February 14, 1969, prescribes requirements for the discharge to the
17 unlined ponds of non-hazardous produced wastewater from Belgian Anticline, Cymric, and
18 McKittrick Oil Fields. WDR No. 69-199 states: “The Discharge shall not cause a pollution of ground
19 or surface waters.” The Explanation of Requirements states “Pollution means an impairment of the
20 quality of waters of the state by sewage or other waste to a degree which does adversely and
21 unreasonably affect such waters for domestic, industrial, agricultural, navigational, recreational, or
22 other beneficial use.”

23 25. The State Water Resources Control Board, Tulare Lake Basin Water Quality Control
24 Plan establishes Water Quality Objectives for Inland Ground Waters, including groundwater. The
25 designated and imputed beneficial uses of the surface and ground waters of the Tulare Lake Basin
26 include municipal and domestic drinking water supply. (See Water Quality Control Plan for the Tulare
27 Lake Basin, Third Edition, Revised May 2018 [“Basin Plan”] at p. 2-3.) Pursuant to the Sources of
28 Drinking Water Policy, all ground waters in the Basin are designated as municipal supply (the use

1 may be existing or potential), unless specifically exempted by the regional Water Board and approved
2 for exemption by the State Water Board. (Id.)

3 26. Moreover, Water Quality Objectives require that all covered waters be maintained free
4 of toxic substances, alone or in combination, in concentrations that produce detrimental physiological
5 responses in human, plant, animal or aquatic life. (See Basin Plan at 3-12.)

6 27. The Facility sits within the boundaries of the Basin Plan, which says:
7 Hydrocarbon production in the San Joaquin Valley's 74 oil fields generates
8 significant volumes of wastewater. Oil field producers continue to use hundreds
9 of sumps as oil/wastewater separators and as wastewater disposal sumps. Some
10 oil field wastewaters contain salts, oil and grease, metals, and organics which can
11 present a threat to the beneficial uses of underlying good quality ground water.
12 However, in some areas, wastewater may be of a quality which allows its reuse
13 for reclamation or discharge to surface waters. In these instances, waste discharge
14 requirements or NPDES permits, as appropriate, are issued. In addition, some
15 ground water in the Basin is naturally of such poor quality that oil field
16 wastewater will not impact its beneficial uses. Due to historical practices,
17 degradation of ground water from oil field wastewater disposal occurred in some
18 areas. The petroleum industry has been eliminating oilfield wastewater disposal
19 sumps.

20 (Basin Plan at p. 4-25.)

21 28. To address the public health concerns created by oil field wastewater disposal in the
22 Tulare Lake Basin, the Basin Plan includes rules regulating oil and gas wastewater discharge in
23 addition to those of WDR No. 69-199, to unlined sumps and groundwater sources:

- 24 • Maximum salinity limits for wastewaters in unlined sumps overlying ground water
25 with existing and future probable beneficial uses are 1,000 µmhos/cm EC, 200 mg/l
26 chlorides, and 1 mg/l boron, except in the White Wolf subarea where more or less
27 restrictive limits apply.
- 28 • Discharges of oil field wastewater that exceed the above maximum salinity limits may
be permitted to unlined sumps, stream channels, or surface waters if the discharger
successfully demonstrates to the Regional Water Board in a public hearing that the
proposed discharge will not substantially affect water quality nor cause a violation of
water quality objectives.
- An exception from the EC and/or the chloride limit may be permitted consistent with
the *Program for Exception from Implementation of Water Quality Objectives for
Salinity*.
- Disposal sumps shall either be free of oil or effectively covered or screened to preclude
entry of birds or animals. Compliance monitoring for wildlife problems shall continue
to be deferred to the Department of Conservation and the California Department of

1 Fish and Wildlife. The Regional Water Board will respond to complaints, spot check
2 for compliance, and enforce conditions as necessary.

- 3 • •Sumps adjacent to natural drainage courses shall be protected from inundation or
4 washout, or properly closed.
- 5 • Regulation of oil field dischargers shall be coordinated with all other state and federal
6 agencies having jurisdiction and interest in the oil field.
- 7 • The discharge of produced wastewater to land, where the concentration of constituents
8 may cause ground water to exceed water quality objectives, shall be subject to the
9 requirements contained in the California Code of Regulations, Title 27, Section 20005,
10 et seq. (Title 27).

11 (Basin Plan at 4-26.)

12 29. Violations of Proposition 65 may be enforced by any person in the public interest, after
13 providing a 60-day notice of the violations to the Attorney General, appropriate District Attorneys
14 and City Attorneys and the alleged violator. (Health and Safety Code § 25249.7(d)(1).) Remedies
15 include injunctive relief to prevent actual or threatened violations, and penalties of up to \$2,500 per
16 day per violation. (Health and Safety Code § 25249.7(a) and (b).)

17 30. California Code of Civil Procedure section 1021.5 permits an award of attorney's fees
18 to a “successful party . . . in any action which has resulted in the enforcement of an important right
19 affecting the public interest if: (a) a significant benefit . . . has been conferred on the general public
20 or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such
21 as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of
22 the recovery, if any.”

23 31. In a Proposition 65 a discharge case, the reduction or elimination of the discharge of
24 listed chemicals establishes a significant public benefit. (11 C.C.R. § 3201(b)(3).)

25 **FACTUAL ALLEGATIONS**

26 32. Plaintiffs are informed and believe, and thereon allege, that Defendant was established
27 in 1932 to serve oil companies in management of production wastes by allowing any oil and gas
28 operation within the service area of the company’s Facility to dispose of wastewater through the
Facility provided that the quality of the wastewater is such that it can be processed by the Facility,
and the waste producer agrees to pay a share of disposal costs through assessments.

1 33. Plaintiffs are informed and believe, and thereon allege, that Defendant has been
2 operating since approximately 1955 and has operated in its current configuration with wastewater
3 storage and treatment ponds, and conveyances, such as pipelines or impoundments, since
4 approximately 1980.

5 34. Plaintiffs are informed and believe, and thereon allege, that the Facility made up of
6 approximately 80 unlined surface impoundments, open-top containment ponds, sumps and/or pits
7 (hereinafter collectively referred to as “pits”), including cleaning, passthrough, evaporation, and
8 percolation pits that occupy about 150 acres.

9 35. Plaintiffs are informed and believe, and thereon allege, that the wastewater entering
10 the Facilities, commonly referred to as “produced water”, is generated as a result of oil and gas
11 exploration and production. The wastewater is disposed of in unlined pits at the Facility where it is
12 discharged and released by percolation into groundwater, and by evaporation.

13 36. Plaintiffs are informed and believe, and thereon allege, that Defendant VWMC
14 receives wastewater for disposal through a single distribution pipeline at the Facility.

15 37. Plaintiffs are informed and believe, and thereon allege, that Defendant discharges
16 and/or disposes as much as 4.4 million gallons of wastewater into these pits in a single day, and that
17 on average, Defendant discharges and/or disposes 2.5 million gallons per day.

18 38. Plaintiffs are informed and believe, and thereon allege that the Regional Water Quality
19 Control Board staff, after investigation, identified discharges from the unlined pits at Violator’s
20 Facility, which have migrated through the soil and caused documented groundwater pollution that
21 has spread past the alluvium and into deeper aquifers. The plume from Defendant’s Facility has
22 migrated laterally for miles.

23 39. Plaintiffs are informed and believe, and thereon allege, that such produced water and
24 wastewater discharged or released from Defendant’s facilities are consistently discharged by
25 Defendant in significant amounts, contain significant amounts of Proposition 65-listed chemicals, and
26 are not in compliance with all applicable laws, regulations, permits, requirements, and orders.

1 40. Plaintiffs are informed and believe, and thereon allege, that discharges into McKittrick
2 pits greatly exceed MCLs and Tulare Lake Basin Plan limits, for benzene, electrical conductivity,
3 chloride, boron, and toluene.

4 41. Plaintiffs are informed and believe, and thereon allege, that Defendant discharges into
5 waters designated MUN – water that either serves or may serve as drinking water or other beneficial
6 uses requiring high quality water.

7 42. Plaintiffs are informed and believe, and thereon allege, that Defendant’s discharges
8 cause a pollution of ground or surface waters in violation of WDR No. 69-199.

9 43. Plaintiffs are informed and believe, and thereon allege, that therefore Defendant
10 knowingly discharged, deposited and/or released a significant amount of Proposition 65-listed
11 chemicals into existing and/or present drinking water sources, thereby posing carcinogenic and
12 reproductive toxicity threats to the public and its drinking water sources.

13 44. Plaintiffs are informed and believe, and thereon allege, that the chemicals present in
14 VWMC’s discharges and releases from its pits do pass, or probably will pass, into sources of drinking
15 water in California, including but not limited to surrounding and underlying groundwater.

16 45. On June 7, 2019, the California Regional Water Quality Control Board Central Valley
17 Region issued Cease and Desist Order No. R5-2019-0045 (“Order”) for the Valley Water
18 Management Company McKittrick 1 & 1-3 Facility. (See Order a 9-10.) The Order was issued due
19 to high levels of pollutants discharged that are creating a groundwater plume. The Order requires
20 Defendant to cease discharging in violation of existing permit requirements and to develop either a
21 proposal for a new permit or plans for the orderly wind-down of operations at the Facility. (Order at
22 11.)

23 46. The June 7, 2019 Order exercises the Regional Board’s prosecutorial discretion to
24 enforce compliance with Basin Plan standards and requirements, but does not consider or enforce
25 compliance with Proposition 65.

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48. Issuance of the relief requested in this Complaint will confer significant benefits on the general public, and result in the enforcement of important rights affecting the public interest, by, among other benefits and rights, upholding existing protections under California Proposition 65 to prevent the discharge or release of known carcinogenic and/or reproductive toxins into sources of drinking water.

49. The necessity and financial burden of enforcement are such as to make an award of attorneys' fees appropriate in this proceeding. Absent enforcement by Plaintiffs, Defendant's discharges and releases in violation of Proposition 65 might otherwise be deemed valid despite their legal and factual inadequacies, and, as a result, cause significant, adverse environmental effects that might otherwise have evaded been prevented.

Violations of Proposition 65

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1 53. On April 15, 2019, Plaintiffs sent the Proposition 65 Notice Letter to Defendants and
2 incorporates the same by reference, as though fully set forth herein.

3 54. Defendant's discharges/releases of wastewater from oil and gas operations, and
4 emissions of chemicals to existing or potential drinking water sources, like the surface and ground
5 waters of the Tulare Lake Basin, pose carcinogenic and reproductive toxicity threats to the public.

6 55. These discharges further the purpose or operation of Defendant's business or are
7 expressly or implicitly authorized by Defendant, and are therefore in the course of doing Defendant's
8 business.

9 56. Defendant's discharges, releases, emissions, disposals and discard include chemicals
10 listed under Proposition 65 and are prohibited from being discharged into a source of drinking water,
11 or tributary thereof, or placed where they pass or probably will pass into a drinking water source.
12 Defendants' discharge, release, emission, disposal and discard of the listed chemicals, below,
13 constitute violations of Proposition 65. The violations of Proposition 65 alleged here include past and
14 ongoing emissions and/or discharges or releases of:

- 15 • 1,4-Dioxane
- 16 • Arsenic
- 17 • Benzene
- 18 • Bromoform
- 19 • Cumene
- 20 • Diethanolamine
- 21 • Ethylbenzene
- 22 • Ethylene Glycol
- 23 • Methanol
- 24 • Naphthalene
- Nickel
- Radionuclides
- Residual (heavy) fuel oils
- Toluene
- Trisodium Nitrilotriacetic acid

25 57. All of the chemicals listed above ("Listed Chemicals") have been on the Proposition
26 65 list longer than twenty months after the date that each were originally listed pursuant to Proposition
27 65 protocols. (Health & Safety Code § 25249.9(a).)

1 58. The above-listed Proposition 65 reproductive or developmental toxics and/or
2 carcinogens have been knowingly emitted, deposited, discharged or released, continue to be
3 knowingly emitted, deposited, released or discharged, and are likely to continue to be knowingly
4 emitted, released or discharged in the future by Defendant, into, onto, or placed where they pass or
5 probably will pass into a drinking water source.

6 59. Plaintiffs are informed and believe, and thereon allege, that Defendant is knowingly
7 discharging, releasing, disposing, discarding or emitting the above referenced chemicals from the
8 Facility into the surface and ground waters of the Tulare Lake Basin.

9 60. The Central Valley Regional Water Quality Control Board has so designated the
10 ground waters of the Tulare Lake Basin as potential sources of drinking water.

11 61. The Sources of Drinking Water Policy and Water Quality Objectives of the Basin Plan
12 are intended to protect Beneficial Uses of Ground Waters. Defendant's discharges, releases, and/or
13 depositions of the Listed Chemicals into this sources of drinking water, or into or onto land where
14 each passed, passes or probably will pass into a source of drinking water jeopardize Water Quality
15 Objectives, are in contravention of the Basin Plan and Sources of Drinking Water Policy.

16 62. Defendant, through the operations of the Facility, violated, violates, and threatens to
17 violate the discharge/release prohibition contained in Health & Safety Code § 25249.5.

18 63. Defendant has been violating, continues to violate and threatens to violate by
19 knowingly discharging, depositing, releasing and/or emitting the Listed Chemicals from the Facility
20 into surface and ground waters, or onto land where the Listed Chemicals pass, have passed or
21 probably will pass into sources of drinking water for a number of years, and at least since April 11,
22 2018.

23 64. In the absence of equitable relief, Defendant will continue to discharge or release
24 chemicals that cause cancer and birth defects into sources of drinking water, which consequently
25 creates a substantial risk of irreparable contamination to these protected sources of drinking water.

26 65. By committing the acts alleged in this Complaint, Defendant at all times relevant to
27 this action, and continuing through the present, has violated California Health & Safety Code
28 §25249.5 by, in the course of doing business, knowingly discharging, releasing, disposing, discarding

1 and/or emitting chemicals known to the State of California to cause cancer or reproductive toxicity
2 into drinking water sources or into or onto land where such chemical passes or probably will pass into
3 any drinking water source.

4 66. By the above-described acts, Defendant has violated Health & Safety Code § 25249.5
5 and is therefore subject to preliminary and permanent injunctions ordering Defendant to stop violating
6 Proposition 65, to require improvements, modifications and monitoring to ensure all present and
7 future discharges, releases, emissions, disposals and discards will not allow chemicals known to the
8 State of California to cause cancer or reproductive toxicity to enter drinking water sources or be
9 placed into or onto land where such chemicals will pass or probably will pass into any source of
10 drinking water.

11 67. An action for injunctive relief under Proposition 65 is specifically authorized by
12 Health & Safety Code § 25249.7 against Defendant for violating or threatening to violate Section
13 25249.5.

14 68. In the absence of preliminary and then permanent injunctive relief, Defendant will
15 continue to create a substantial risk of irreparable injury by continuing to cause citizens of the State
16 of California, residents of McKittrick, California, and surrounding and downstream communities, to
17 be involuntarily, unknowingly and unwittingly exposed to the Listed Chemicals in their drinking
18 water as a result of Defendant's acts and omissions.

19 69. Continuing commission by Defendant of the acts and omissions alleged above will
20 irreparably harm the citizens of the State of California, for which harm they have no plain, speedy, or
21 adequate remedy at law.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for judgment against the Defendant as follows:

24 1. That Defendant, its successors, agents, representatives, employees, and assigns be
25 permanently enjoined from violating those provisions of Health and Safety Code section 25249.5 et
26 seq. and its implementing regulations, which Defendant is alleged to have violated.

27 2. That Defendant be assessed civil penalties of \$2,500 per day for each violation
28 pursuant Health and Safety Code section 25249.7 in addition to any other penalty established by law.

1 3. That Plaintiff recovers its costs of suit herein, including attorneys' fees and costs of
2 investigation.

3 4. For such other and further relief as the Court may deem just and proper.
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5 DATED: June 24, 2019
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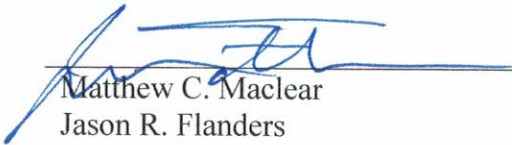
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9 Matthew C. Maclear
10 Jason R. Flanders
11 AQUA TERRA AERIS LAW GROUP
12 Attorneys for Plaintiffs CLEAN WATER
13 FUND and ASSOCIATION OF
14 IRRITATED RESIDENTS
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EXHIBIT A



April 15, 2019

VIA CERTIFIED MAIL

VIA US MAIL

Mr. Jason Meaders Agent for Service of Process for Valley Water Management Company 7500 Meany Ave. Bakersfield, CA 93308	Public Prosecutors (See attached service list)
Current President/CEO Valley Water Management Company 7500 Meany Ave. Bakersfield, CA 93308	

***NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5 et seq. AND
60-DAY NOTICE OF INTENT TO SUE UNDER HEALTH & SAFETY CODE § 25249.5 et seq. (California
Safe Drinking Water and Toxic Enforcement Act, a.k.a. "Proposition 65")***

Dear Hon. Prosecutors and Valley Water Management Company:

This Notice of Violation is provided by the Clean Water Fund ("CWF"), and Association of Irrigated Residents ("AIR") pursuant to and in compliance with Health & Safety Code § 25249.7 (d). The noticing parties are represented by Aqua Terra Aeris Law Group.

CWF is a nonprofit corporation dedicated to ensuring safe clean affordable drinking water, preventing health-threatening pollution, and creating environmentally safe jobs and businesses. Andrew Grinberg is the National Campaigns Special Projects Manager, and is the responsible individual within CWF. CWF brings this action in the public interest, pursuant to Health & Safety Code section 25249.7 (d).

AIR is a nonprofit corporation dedicated to advocating for air quality and environmental health and justice in the San Joaquin Valley, including preventing pollution of groundwater. Tom Frantz is the President and responsible person within AIR. AIR is located at 29389 Fresno Ave., Shafter, California 93263. AIR brings this action in the public interest, pursuant to Health & Safety Code § 25249.7 (d).

This Notice of Violation ("NOV") is provided pursuant to, and in compliance with, California Health and Safety Code Section 25249.7. This letter serves to provide the public prosecutors and Valley Water Management Company, formerly known as Valley Waste Disposal Company, ("Violator"), with notice of alleged violations. CWF and AIR intend to file a private enforcement action in the public interest 60 days

after effective service of this NOV, unless a public prosecutor has commenced and are diligently prosecuting an action to abate these violations. CWF and AIR, in the public interest, seek to stop the Violator from discharging chemicals known to the state to cause cancer or reproductive toxicity into sources of drinking water or into/onto land where such chemicals will probably pass into a source of drinking water.

CWF and AIR have identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code section 25249.5 et seq., concerning the discharges identified below. These violations have occurred and continue to occur because the alleged Violator, Valley Water Management Company, discharges, deposits or releases, into its wastewater percolation and disposal ponds, Proposition 65-listed chemicals, contaminated wastewater or produced water, into existing and/or present sources of drinking water and/or into underground sources of drinking water designated as municipal drinking water supply/ies under the Water Quality Control Plan for the Tulare Lake Basin ("Basin Plan") and/or the Safe Drinking Water Act of 1974 (42 U.S.C. §300(f) et seq.). Violator also discharges these chemicals and hazardous substances onto and/or into land, by and through its disposal/percolation ponds, where they probably will pass into underground sources of drinking water.

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached Summary provided by California Environmental Protection Agency's Office of Environmental Health Hazard Enforcement. (Note, copies of the same will not be provided to public prosecutors.)

Description of Violation

Violator: **Valley Water Management Company**
7500 Meany Ave.
Bakersfield, CA 93308

Time Period of Violation:

The violations have been occurring since at least April 11, 2018, and are continuing daily.

Provisions of Proposition 65:

This Notice of Violation is brought pursuant to the "Discharge Prohibition" prong of Proposition 65, which can be found at Health and Safety Code Section 25249.5.

Violator is a "person[s] in the course of doing business" as defined in Health & Safety Code § 25249.11.

Information available to CWF and AIR indicates that the Violator has been, and continues, discharging, releasing and/or depositing produced water and/or wastewater from oil and gas production operations in and around the Violator's McKittrick 1 and 1-3 Facility (Facility), located approximately 8.7 miles west

of the community of Buttonwillow. The facilities are made up of approximately 80 pits, including cleaning, passthrough, evaporation, and percolation pits that occupy about 150 acres. Violator discharges and/or disposes as much as 4.83 million gallons of wastewater into these pits in a single day; on average, Violator discharges and/or disposes 2.8 million gallons per day.

Information available to CWF and AIR indicates that such produced water and wastewater discharged or released from Violator's facilities are consistently discharged by Violator in significant amounts, contain significant amounts of Prop. 65-listed chemicals and are not in compliance with all applicable laws, regulations, permits, requirements, and orders. Discharges into McKittrick pits greatly exceed MCLs and Tulare Lake Basin Plan limits, for benzene, electrical conductivity, chloride, boron, and toluene. Violator discharges into waters designated MUN – water that may serve as drinking water or other beneficial uses requiring high quality water. Violator's discharges cause a pollution of ground or surface waters in violation of Waste Discharge Requirements Resolution No. 69-199. Therefore, Violator knowingly discharged, deposited and/or released a significant amount of Proposition 65-listed chemicals into existing and/or present drinking water sources, thereby posing carcinogenic and reproductive toxicity threats to the public and its drinking water sources.

Chemicals Involved:

The name of the listed Chemicals involved in these violations are:

- 1,4-Dioxane
- Arsenic
- Benzene
- Bromoform
- Cumene
- Diethanolamine
- Ethylbenzene
- Ethylene Glycol
- Methanol
- Naphthalene
- Nickel
- Radionuclides
- Residual (heavy) fuel oils
- Toluene
- Trisodium Nitritotriacetic acid

All of the Chemicals listed above have been on the Proposition 65 list longer than twenty months. (Health & Safety Code § 25249.9(a).) The above-listed Proposition 65 reproductive or developmental toxics and/or carcinogens ("Listed Chemicals") have been knowingly deposited, discharged or released by Violator through its operation of the Facility, and continue to be knowingly deposited, released or discharged, and are likely to continue to be knowingly deposited, released or discharged by Violator in

the future into water or onto or into land where such chemical(s) pass or probably will pass into any source of drinking water. The Violator has been and/or is knowingly discharging, releasing or depositing the Listed Chemicals into groundwater designated as municipal drinking supply, or onto land where they probably will pass into such groundwater. The Violator, through the operations of the Facility and knowing discharges of the Listed Chemicals, violated, violate and threaten to violate the discharge/release prohibition contained in Health & Safety Code § 25249.5.

Description of Discharge:

Valley Water Management Company (“VWMC”), formerly known as Valley Waste Disposal Company, owns and operates oil and gas wastewater processing and disposal facilities, in or near the Cymric Area and Belgian Anticline and McKittrick Oil Fields near the city of McKittrick in Kern County. The Facility, identified below, contains approximately 80 unlined surface impoundments, open-top containment ponds, sumps and/or pits, (hereinafter collectively referred to as “pits”), spanning approximately 150 acres. The wastewater, commonly referred to as “produced water”, is generated as a result of oil and gas exploration and production. This wastewater is disposed of in unlined pits where it is discharged and released by percolation and evaporation. VWMC receives wastewater for disposal through a single distribution pipeline at the Facility with wastewater from California Resource Corporation, Sentinel Peak Resources and Holmes Western. VWMC disposes of the approximately 2.8 million gallons of wastewater daily through unlined pits designed and operated to allow infiltration, permeation, penetration, percolation, seepage, discharges and releases of the wastewater underground. The Regional Water Quality Control Board staff, after investigation, identified discharges from the unlined pits at Violator’s Facility, which have migrated through the soil and caused documented groundwater pollution that has spread past the alluvium and into deeper aquifers. The plume from Violator’s Facility has migrated laterally for miles. The Chemicals present in VWMC’s discharges and releases from its pits do pass, or probably will pass, into sources of drinking water in California, including but not limited to surrounding and underlying groundwater and nearby surface waters.

The Facility, including its wastewater disposal pits, is at or near the following locations:

McKittrick 1

Township 29S, Range 22E, Section 19; Mount Diablo Base & Meridian
Lat./Long. 35.389301, -119.649902

McKittrick 1-3

Township 29S, Range 22E, Section 19; Mount Diablo Base & Meridian
Lat./Long. 35.389301, -119.649902

Sources of Drinking Water:

A “source of drinking water” means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional water board as being

suitable for domestic or municipal uses. (Health & Safety Code § 25249.11(d).) Moreover, “water” is defined to include both surface and groundwater. (California Code of Regulations, title 27, Section 25102(w).)


The State Water Resources Control Board, Tulare Lake Basin Water Quality Control Plan (“Basin Plan”) establishes Water Quality Objectives for Inland Ground Waters, including groundwater. Pursuant to the Sources of Drinking Water Policy, all ground waters in the Basin are designated as municipal unless specifically exempted and approved. (Tulare Lake Basin Plan at p. II-2 (“Due to the “Sources of Drinking Water Policy,” all ground waters are designated MUN (the use may be existing or potential) unless specifically exempted by the Regional Water Board and approved for exemption by the State Water Board.”) Moreover, Water Quality Objectives require that all covered waters be maintained free of toxic substances, alone or in combination, in concentrations that produce detrimental physiological responses in human, plant, animal or aquatic life. The Sources of Drinking Water Policy and Water Quality Objectives are intended to protect Beneficial Uses of Ground Waters such as the Aquifer.

The Violator’s discharges, releases, and/or depositions of the Listed Chemicals into this sources of drinking water, or into or onto land where each passed, passes or probably will pass into a source of drinking water jeopardize Water Quality Objectives, are in contravention of the Basin Plan and Sources of Drinking Water Policy, and, therefore, are violations of Proposition 65’s discharge prohibition.

Resolution of Noticed and Alleged Violations:

Based on the allegations set forth in this Notice, CWF and AIR intend to file a citizen enforcement action against the alleged violator unless the violator agrees in a binding written instrument to remedy the violations alleged herein by ceasing ongoing and future discharges of the identified Proposition 65-listed chemicals, and paying appropriate costs, fees and civil penalties pursuant to Health & Safety Code Section 25249.7, Code of Civil Procedure Sections 1021.5 and 1033.5 *et seq.* CWF and AIR have retained counsel and are represented in this matter. Thus, please direct all communications regarding this notice to their enforcement counsel: Matthew C. Maclear at Aqua Terra Aeris (ATA) Law Group, 490 43rd Street, Suite 108, Oakland, CA 94609, and (415) 568-5200.

Sincerely,



Matthew C. Maclear
Aqua Terra Aeris Law Group
Attorneys for Noticing Parties

Enclosure: Appendix A – Prop. 65 Summary

CERTIFICATE OF SERVICE

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 490 43rd Street, Suite 108, Oakland, California. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Oakland, California.

On April 15, 2019, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President/CEO
Valley Water Management Company
7500 Meany Ave.
Bakersfield, CA 93308

Mr. Jason Meaders
Agent for Service of Process for
Valley Water Management Company
7500 Meany Ave.
Bakersfield, CA 93308

On April 15, 2019, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On April 15, 2019, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.**; on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by U.S. First Class Mail.

Executed on April 15, 2019, in Oakland, California.



Esmeralda Bustos



MAIL SERVICE LIST

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment. An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here, below: