

1 Plaintiff NACIMIENTO REGIONAL WATER MANAGEMENT ADVISORY COMMITTEE
2 hereby alleges as follows:

3 **I. FACTUAL BACKGROUND**

4 1. Lake Nacimiento (the "Lake") is an 18-mile (29 km) long lake with approximately 165
5 miles of shoreline on the Nacimiento River in northern San Luis Obispo County originally designed
6 and built for flood control and recreation. Lake Nacimiento is a haven for watersport enthusiasts and
7 is well known as a recreation destination. The Lake attracts thousands of visitors each year for
8 recreation, including for bass and other recreational sport fishing, waterskiing, wakeboarding, jet
9 skiing, wake surfing, boating, swimming and other water-related activities.

10 2. In 1954, the Monterey County Flood Control and Water Conservation District (the
11 "District"), the predecessor in interest to defendant Monterey County Water Resources Agency (the
12 "Agency"), filed Application 16124 for a water rights permit that would authorize construction and
13 operation of the Nacimiento Reservoir. One of the express stated purposes of the project was that it
14 was to be used for recreational purposes.

15 3. Lake Nacimiento was eventually completed in 1957 by the District and continues to be
16 operated by the Agency. The California State Water Resources Control Board ("State Board")
17 subsequently inspected Lake Nacimiento, reviewed its operations, determined that the Agency had
18 complied with its water rights permit, and issued a water rights license for Nacimiento Reservoir
19 (License 7543). Currently, Lake Nacimiento is operated with multi-purpose objectives including dam
20 safety, flood protection, groundwater recharge, operation of the Salinas River Diversion Facility
21 ("SRDF"), water supply, fish migration, fish habitat requirements, agriculture, and recreation.

22 4. As part of the initial construction of the Lake, the District used its eminent domain
23 powers, as codified by the Monterey County Flood Control and Water Conservation District Act (the
24 "Act"), to condemn and obtain private lands in and around the Lake. The Act specifically provided
25 the District the authority and power to condemn private lands as public funds had previously been
26 provided for the construction of a dam and reservoir by the District, including a reservoir available for
27 fishing and recreational use.

28

1 5. Specifically, Section 4 of the Act gave the District the power to condemn “lands
2 deemed by the supervisors of the district to be necessary or convenient for the installation,
3 construction, use and maintenance of recreational areas or facilities including picnic grounds, play
4 grounds, camp grounds, home sites, boats and fishing, bathing or other facilities for use by the public,
5 subject to such rules and regulations and reasonable charges as may be prescribed by the board of
6 supervisors of the district; provided, however, that no property situated in another county, except
7 property sought to be condemned in condemnation proceedings pending before a court upon the
8 effective date of this section (as amended at the 1956 First Extraordinary Session) shall be condemned
9 by the district for recreational areas or facilities unless the board of supervisors of the county in which
10 such property is situated agrees to the condemnation thereof.” Thus, not only was it expressly stated
11 that it was necessary to condemn the lands for recreational uses, but San Luis Obispo County (“SLO
12 County”) was required to give, and did give, permission to the District to condemn lands within SLO
13 County for the express purpose of using such lands for recreation.

14 6. Indeed, due to the statewide demand and appeal for recreation, Monterey County (the
15 “County”) sought the financial assistance of the State of California (“State”), and in particular the
16 State Department of Fish and Game. To entice the State into providing a grant to the County of \$1.5
17 million, the County wrote a detailed grant application describing the commitment to develop a first-
18 class recreation area at Lake Nacimiento. In that application, the County reaffirmed that recreation
19 was one of the County’s highest priorities and made a long-term promise to promote and develop
20 recreational facilities at Lake Nacimiento. As a result, on or about June 15, 1958, the County and the
21 State entered into an agreement whereby the State gave the County \$1.5 million in exchange for a
22 promise to keep Lake Nacimiento and the surrounding environs open to the public.

23 7. The District also contracted for, and was granted various easements over, private land
24 with the express consideration that such easements were to be used for, among other things, recreation.
25 For example, in one easement granted to the District by the Stenner family, the easement expressly
26 states that, “[t]he easement shall further include the right of the public in general to land boats, and
27 fish from, the banks adjacent to the water within the above-described easement.” In another easement
28 granted to the District by the Forbes family, the easement states, “[t]he easement shall also include the

1 right of the public in general to pass over, fish from and swim in the water flooding the above-
2 described land.”

3 8. Defendants’ obligation to provide adequate resources for recreation on Lake
4 Nacimiento is further evidenced in a subsequent permit application for a “License for Diversion and
5 Use of Water” dated August 6, 1964 (application No. 16124, permit No. 10137) filed with the State
6 Board, in which Defendants reaffirmed the purpose of the project and specifically stated a description
7 of the beneficial use of the reservoir as follows: “Recreational use at Nacimiento Reservoir within San
8 Luis Obispo County and irrigation, domestic, municipal, industrial and recreational uses within an area
9 of Monterey County.”

10 9. Defendants again, in 1996, applied for and were granted Permit 21089, subject to prior
11 rights, that authorized purposes for using the water for irrigation, industrial, municipal, **recreation**
12 **and domestic use.**

13 10. Over the last 50 years, Defendants have repeatedly gone back to the State and
14 consistently restated their continued and ongoing commitment to recreation in their applications for
15 millions of additional dollars in public funding for recreational improvements and maintenance. With
16 each application Defendants have submitted for public funds, they have reiterated their commitment to
17 recreation.

18 **II. FACTS SPECIFIC TO PLAINTIFF**

19 11. Plaintiff represents property owners, visitors and enthusiasts that enjoy the Lake for
20 recreation, as well as owners and businesses that draw water directly from the Lake for their own
21 consumption.

22 12. Under normal circumstances Lake Nacimiento is one of the largest fresh water lakes in
23 Central California, west of the Central Valley and the Sierras. Thousands of people from throughout
24 the United States visit the Lake each year during the summer months and depend on the Lake for an
25 affordable source of healthy, outdoor, family recreation. Local residents, those within a 60-mile radius
26 of the Lake, often spend many of their summer weekends, as well as their vacations, at the Lake.

27 13. Defendants, however, in direct contravention of their various obligations and
28 commitments described herein and many repeated affirmations that the Lake would be operated in a

1 manner to ensure it would have sufficient resources for recreation, have operated the Lake in a manner
2 that renders it almost unusable by property owners and visitors for recreation.

3 14. Specifically, the State Board limits the release of water from the Lake to 180,000 acre-
4 feet per year. On information and belief and thereon alleged, Defendants have released more than the
5 180,000 acre-feet per year limitation in at least one recent year, and perhaps in other recent years.

6 15. Additionally, on information and belief and thereon alleged, Defendants have
7 mismanaged the operations of the Lake and have released more water than necessary to the detriment
8 of recreation on the Lake.

9 16. Defendants have also, on information and belief and thereon alleged, purposefully
10 misrepresented the water level required for recreation so as to draw more water than necessary and in
11 violation of the permits governing water releases from the Lake, for other purposes.

12 17. Specifically, Defendants, in the Nacimiento Dam Operation Policy adopted July 2018,
13 state that: “[a]t an elevation of 730 feet most of the boat ramps around the reservoir are useable and
14 most private property owners have access to the reservoir.”

15 18. Defendants therefore contend that an elevation of 730 feet above mean sea level
16 (“msl”) is sufficient for most of the boat ramps docks and slips around the reservoir to be used for
17 recreational purposes and to provide access to the Lake. This is false. A water level of 730 msl feet
18 represents 25% of the storage capacity of the Lake and at that level, nearly all the launch ramps docks
19 and slips along the Lake are rendered unusable. A water level of 730 msl feet also creates substantial
20 safety issues as at that level it renders certain areas of the Lake too narrow for boats to pass one
21 another, as well as exposes previously submerged tree stumps, rocks and islands which pose hazards
22 to boating. Plaintiff contends that under current conditions and based on the high volume of visitor
23 traffic on the Lake, a minimum water level of 748 msl feet is necessary to support recreational uses
24 between Memorial Day and Labor Day each year, the peak recreational period for the Lake.

25 19. To that end, Plaintiff has fought to maintain a consistent and appropriate water level of
26 748 msl feet. At this level, during most years, there is enough water to satisfy the needs of farmers in
27 the Salinas Valley Basin, meet the flow requirements for fish habitation, and concurrently sustain
28 recreation throughout the peak summer months – at least through Labor Day of each year.

1 20. Despite this, Defendants unwaveringly refuse to meet their obligations as consistently
2 affirmed and reaffirmed throughout the history of the Lake. Defendants' continuing violations of their
3 permits and refusal to provide a sufficient water level for recreational purposes is violative of
4 Plaintiff's water rights, as well as the rights of the public to use the Lake for recreation.

5 **III. PARTIES**

6 21. Plaintiff Nacimiento Regional Water Management Advisory Committee
7 ("NRWMAAC") is a California non-profit corporation with its principal place of business in the City of
8 Atascadero, San Luis Obispo County, State of California. NRWMAAC's members and constituents
9 include individuals and businesses that own, lease or otherwise control real property on and around the
10 Lake and rely on the Lake for both recreation and as their sole water source. NRWMAAC's members
11 and constituents have authorized NRWMAAC to act as their representative in all matters pertaining to
12 the instant suit.

13 22. Defendant Agency was created pursuant to the Monterey County Water Resources Act
14 and is a public entity organized and existing under the laws of the State of California.

15 23. Defendant Monterey County Water Resources Agency Board of Supervisors is the
16 governing board of the Agency, a public entity organized and existing under the laws of the State of
17 California.

18 24. Defendant Monterey County Water Resources Agency Board of Directors is separate
19 and apart from the Board of Supervisors of the Agency. Section 52(a) of the Act states: "The
20 Directors shall advise the Board of Supervisors on all matters relating to the agency within the scope
21 of the Supervisors' duties. No action shall be taken by the Board of Supervisors relating to the
22 Agency without seeking or obtaining a recommendation from the Directors."

23 25. Defendant County of Monterey is a public entity organized and existing under the laws
24 of the State of California.

25 26. Defendant County of Monterey Board of Supervisors is the governing Board for the
26 County of Monterey, a public entity organized and existing under the laws of the State of California.

27 27. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does
28 1 through 50, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff shall

1 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed
2 and believes and thereon alleges that each of said fictitiously named Defendants is in some manner
3 responsible for the legal violations and injury and damage to Plaintiff as alleged herein. Plaintiff is
4 informed and believes and thereon alleges that at all times herein mentioned, Defendants herein were
5 the agents, servants, and employees of their Co-Defendants, and in doing the things hereinafter
6 mentioned, acting within the course and scope of their authority as such agents, servants and
7 employees, with the permission and consent of their Co-Defendants

8 **IV. JURISDICTION AND VENUE**

9 28. The Agency's enabling act states that "[a]ctions and decisions of the Agency, whether
10 by the Board of Supervisors, the Directors, or others acting on behalf of the Agency are subject to
11 judicial review... ."

12 29. This Court has subject matter jurisdiction over this action and personal jurisdiction over
13 the Defendants, all of whom reside in and operate and conduct business in the State of California.

14 30. Pursuant to Code of Civil Procedure sections 392 and 395, venue as to each Defendant
15 is proper in this Court, because the Plaintiff owns and uses real property and water rights located
16 within San Luis Obispo County and the transactions and occurrences giving rise to the Plaintiff's
17 claims arise within San Luis Obispo County.

18 **FIRST CAUSE OF ACTION**

19 **(INVERSE CONDEMNATION)**

20 **(By Plaintiff as against all Defendants)**

21 31. Plaintiff realleges and incorporates herein by reference each and every allegation
22 contained in paragraphs 1 through 30, inclusive, as though fully incorporated herein and made a part
23 hereof.

24 32. Plaintiff and its constituents, as property owners in and around Lake Nacimiento, hold
25 valuable property interests in real property in San Luis Obispo County. Plaintiff and its constituents
26 purchased such real property in reliance on Defendants' numerous legal obligations and public
27 affirmations to ensure Lake Nacimiento would be operated in a manner that would provide sufficient
28 resources for recreational uses.

1 purchased such real property in reliance on Defendants' numerous legal obligations and public
2 affirmations to ensure Lake Nacimiento would be operated in a manner that would provide sufficient
3 resources for recreational uses.

4 41. Defendants' wrongful conduct in failing to meet their obligations to provide sufficient
5 resources for recreational uses on the Lake, releasing more water than allowed under the permits
6 described herein, and misrepresentations regarding sufficient water levels on the Lake have caused
7 irreparable injury to Plaintiff and unless and until enjoined and restrained by an order of this Court,
8 Defendants' wrongful conduct will continue to cause great and irreparable injury to Plaintiff and its
9 constituents.

10 42. Plaintiff has no adequate or speedy remedy at law for the injuries which are threatened
11 in that, if Defendants are allowed to continue on their present course of conduct before this lawsuit is
12 prosecuted to judgment, Plaintiff and its constituents will continue to be unable to use the Lake for
13 recreational uses, as well as be unable to use the Lake as a water source for personal use.

14 43. As a result, Plaintiff is entitled to an injunction preventing Defendants from continuing
15 to act in violation of the permits described herein, as well as releasing water from the Lake so as to
16 render the Lake unusable for recreational purposes.

17 **THIRD CAUSE OF ACTION**

18 **(Writ of Mandate – Violation of the California Public Records Act,**

19 **Gov. Code Section 6250 et seq.)**

20 **(By Plaintiff As Against the Agency))**

21 44. Plaintiff hereby incorporates by reference paragraphs 1 through 43 as if fully set forth
22 herein.

23 45. On September 25, 2018, Plaintiff submitted to the Agency a written Public Records Act
24 ("PRA") request for records relating to recreation as it pertains to Lake Nacimiento. A true and
25 correct copy of Plaintiff's PRA request is attached hereto as Exhibit A.

26 46. Although the Agency provided some records, Plaintiff is informed and believes and,
27 based thereon, alleges that the Agency has failed to timely produce all documents responsive to
28 Plaintiff's PRA request.

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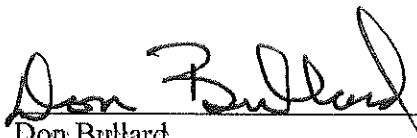
VERIFICATION
*Nacimiento Regional Water Management Advisory Committee vs.
Monterey County Water Resources Agency, et al.*

I, Don Bullard, declare I am the President for the Nacimiento Regional Water Management Advisory Committee.

I have read the attached Verified Petition for Writ of Mandamus and Complaint for 1) Inverse condemnation; 2) Injunctive relief; and 3) Violation of the California Public Records Act. The information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents or compiled from available documents, including all contentions and opinions, and, as to those matters, I am informed and believe that they are true.

Executed on January 14, 2019 at Los Angeles County, California.

I declare under penalty of perjury that the foregoing is true and correct.



Don Bullard
President, Nacimiento Regional Water Management
Advisory Committee

EXHIBIT A

August 23, 2018

Via E-Mail: henaultag@co.monterey.ca.us
Monterey County Water Resources Agency
Attn: Custodian of Records
1441 Schilling Pl., North Bldg.
Salinas, CA 93901

Re: Public Records Act request

Dear Custodian of Records:

We write to request documents in the possession of the Monterey County Water Resources Agency, the successor to the Monterey County Flood Control & Water Conservation District (the "District"), pursuant to the California Public Records Act (Gov. Code section 6250, et seq.) and Article I, Section 3 of the California Constitution.

Please provide a copy of, or allow for the inspection and copying of, the following records:

1. Any and all resolutions of necessity pertaining to any eminent domain actions taken by the District with respect to the Nacimiento Reservoir from January 1950 – January 1958.
2. Any and all documents, communications and memoranda relating to any and all resolutions of necessity pertaining to any eminent domain actions taken by the District with respect to the Nacimiento Reservoir from January 1950 – January 1958.
3. Any and all court filings pertaining to any eminent domain actions by the District with respect to the Nacimiento Reservoir from January 1950 – January 1958. To the extent any court filings took place beyond January 1958 with respect to any resolutions of necessity sought herein, please provide all documents up to the last filed document in such an action irrespective of date.

In you have any questions regarding any of the foregoing categories, please do not hesitate to contact me. Pursuant to Gov. Code section 6253, please provide your response within 10 days.

Thank you for you timely attention to these requests.

Very truly yours,



Edward B. Kang