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By _____, Deputy
Case Number:
34-2018-80002957

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12 GRASS VALLEY NEIGHBORS, a nonprofit
13 unincorporated association,

14 Petitioner and Plaintiff,

15 vs.

16 CALIFORNIA STATE WATER
17 RESOURCES CONTROL BOARD, BY AND
18 THROUGH THE CENTRAL VALLEY
19 REGIONAL WATER QUALITY CONTROL
20 BOARD; YUBA COUNTY, BY AND
21 THROUGH ITS BOARD OF
22 SUPERVISORS; CALIFORNIA
23 DEPARTMENT OF FISH AND WILDLIFE;
24 CENTRAL VALLEY FLOOD PROTECTION
25 BOARD; and DOES 1-20, inclusive,

26 Respondents and Defendants.

27 _____ /
28 YUBA COUNTY MOTORPLEX, LLC, a
Delaware limited liability company; YUBA
COUNTY ENTERTAINMENT, LLC, a
Delaware limited liability company; and
DOES 21-40, inclusive,

Real Parties in Interest. _____ /

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CASE NO.

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF, AND FOR
DECLARATORY RELIEF

(Code Civ. Proc. §§1085, 1094.5 and Pub.
Res. Code §21000 *et seq.* the
California Environmental Quality Act)

1 **INTRODUCTION**

2 Petitioner/Plaintiff GRASS VALLEY NEIGHBORS, a nonprofit unincorporated
3 association (“Petitioner” or “GVN”) respectfully petitions this Court for a Writ of Mandate
4 pursuant to Code of Civil Procedure sections 1085 and 1094.5, and for a declaration of rights
5 directed at Respondents/Defendants CALIFORNIA STATE WATER RESOURCES CONTROL
6 BOARD, BY AND THROUGH THE CENTRAL VALLEY REGIONAL WATER QUALITY
7 CONTROL BOARD (hereinafter “Water Board”); CALIFORNIA DEPARTMENT OF FISH
8 AND WILDLIFE; and CENTRAL VALLEY FLOOD PROTECTION BOARD, as responsible
9 and trustee agencies, that they exercise their authority over the project site and enforce their rules
10 and regulations related to construction activities and environmental protection measures,
11 including but not limited to CEQA, for the benefit of Petitioner and the residents of the State of
12 California.

13 Petitioner respectfully petitions this Court for a Writ of Mandate pursuant to Code of
14 Civil Procedure sections 1085 and 1094.5, and for a declaration of rights directed at
15 Respondent/Defendant YUBA COUNTY, BY AND THROUGH ITS BOARD OF
16 SUPERVISORS (“Yuba County”), to: (1) compel enforcement of Ordinance No. 1219, Yuba
17 County Raceway, approved by the voters as Measure “R” on November 27, 1998 (“Measure R”
18 as used herein refers to the Ordinance and the property is referred to as the “Raceway Property”),
19 relative to construction that has occurred and/or is ongoing that is not in compliance with local,
20 state, and federal laws; and (2) enforce the California Environmental Quality Act (CEQA)
21 relative to discretionary projects within its jurisdiction; and (3) vacate and annul any grading
22 permits issued to Real Parties in violation of Yuba County’s obligations under Measure R,
23 CEQA, and California’s land use and planning laws.

24 Petitioner respectfully petitions this Court for a declaration of rights that the Raceway
25 Property is subject to CEQA review, and that if Yuba County refuses to act as the lead agency,
26 the Water Board will be declared Lead Agency, and will consult with Yuba County and the
27 named responsible/trustee agencies relative to all grading/construction activities in the Raceway
28 Property.

1 Petitioner respectfully petitions this Court for Preliminary and Permanent Injunction that
2 (1) any and all discretionary permits issued by any Respondent/Defendant to Real Parties or their
3 agents be vacated and annulled, and (2) order that no further construction activities, including
4 grading, occur in the Raceway Property until the proper permits are obtained, and the appropriate
5 responsible and trustee agencies and Yuba County comply with CEQA.

6 Petitioner is informed and believes that significant construction and grading
7 improvements have already occurred and/or are ongoing with the Raceway Property, as
8 described below, all without a permit and environmental analysis from the necessary federal,
9 state, and local agencies, as required by Measure R, CEQA, federal and state law, including, but
10 not limited to, the agencies named as Respondents/Defendants. Discretionary construction
11 activities necessitating an analysis under CEQA, and requiring special permits from the
12 identified state agencies, have and are continuing to have an ongoing impact to the immediate
13 and surrounding environment and must be enjoined to prevent further irreparable harm to the
14 Raceway Property, the surrounding community, and the State.

15 A writ of mandate and preliminary and permanent injunctions are necessary to remedy
16 Respondents/Defendants' failure to act described above, and to ensure that Respondents/
17 Defendants comply with all applicable laws, and to ensure proper review, disclosure, and
18 mitigation of the potential environmental impacts resulting from the unpermitted and
19 unauthorized development of the Raceway Project pursuant to CEQA and state and federal laws
20 and regulations. By this Verified Petition, Petitioner represents the following:

21 **PARTIES**

22 1. Petitioner/Plaintiff GRASS VALLEY NEIGHBORS ("Petitioner" or "GVN") is,
23 and at all times mentioned herein was a California nonprofit unincorporated association.
24 Petitioner's members include residents, voters, property owners, and taxpayers in and around
25 Grass Valley, Nevada County and in and around Marysville and Olivehurst, Yuba County.
26 Petitioner's members are vitally and beneficially interested in the land use decisions made by
27 Respondents. Petitioner's members and representatives are active in the community and are
28 concerned about ongoing impacts to the environment on or about the Raceway Property, and

1 have provided notice to Respondents/Defendants regarding unlawful construction activities on
2 the Raceway Property prior to filing this Petition.

3 2. Respondent/Defendant CALIFORNIA STATE WATER RESOURCES
4 CONTROL BOARD, BY AND THROUGH THE CENTRAL VALLEY REGIONAL WATER
5 QUALITY CONTROL BOARD (“CVRWQCB”), is a State Agency whose duty is to preserve,
6 enhance, and restore the quality of California's water resources and drinking water for the
7 protection of the environment, public health, and all beneficial uses, and to ensure proper water
8 resource allocation and efficient use, for the benefit of present and future generations.
9 CVRWQCB is a Responsible Agency under CEQA for any construction activities in the
10 Raceway Property.

11 3. Respondent/Defendant CALIFORNIA DEPARTMENT OF FISH AND
12 WILDLIFE (“CDF&W”) has the duty and responsibility to protect and manage the state’s
13 natural resources and their habitat; is charged with implementing and enforcing the regulations
14 set by the Fish and Game Commission, including regulating the use of protected habitat for
15 threatened/ endangered species. CDF&W is a Trustee Agency and a Responsible Agency under
16 CEQA for any construction activities in the Raceway Property.

17 4. Respondent/Defendant CENTRAL VALLEY FLOOD PROTECTION BOARD
18 (“CVFPB”) is the State regulatory agency responsible for ensuring that appropriate standards are
19 met for the construction, maintenance, and protection of the flood control system that protects
20 life, property, and wildlife habitat in California’s vast and diverse Central Valley from the
21 devastating effects of flooding. CVFPB issues encroachment permits and works with other
22 agencies to improve the flood protection structures, enforces removal of problematic
23 encroachments, and keeps watch over the Central Valley’s continually improving flood
24 management system. CVFPB is a Responsible Agency under CEQA for any construction
25 activities in the Raceway Property.

26 5. Respondent/Defendant YUBA COUNTY (“County” or “Yuba County”) is, and at
27 all times mentioned herein is a county existing under the laws of the State of California. The
28 County has a duty to enforce Measure R as passed by the voters and to comply with state and

1 federal law requirements, including State Planning and Zoning Laws, CEQA, and state and
2 federal laws protecting species and wetlands when considering discretionary land use requests.
3 Yuba County has the obligation to provide notice to and consult with Trustee and Responsible
4 Agencies when approving of discretionary projects under CEQA within its jurisdiction, and at all
5 times has failed to do so.

6 6. Petitioner is informed and believes, and thereon alleges that Real Parties in
7 Interest YUBA COUNTY ENTERTAINMENT, LLC, a Delaware limited liability company
8 (“Yuba County Entertainment”) and YUBA COUNTY MOTORPLEX, LLC, a Delaware limited
9 liability company (“Yuba County Motorplex”) are related companies with the same or similar
10 ownership interests (together the “Real Parties in Interest”), and own property in the Raceway
11 Property that is the site of the unlawful and unpermitted grading and construction activity, and
12 both are registered to do business in the State of California.

13 7. Petitioner does not know the true names or capacities, whether individual,
14 corporate, or otherwise, of those Respondents/Defendants and Real Parties in Interest sued herein
15 as DOES 1 through 40. Petitioner is informed and believes, and thereon alleges that said
16 Respondents/Defendants and Real Parties in Interest are in some manner responsible for the
17 adoption of, imposition of, or administration of those laws, ordinances, and regulations of which
18 Petitioner complains herein. Petitioner will amend this Petition to set forth the true names and
19 capacities of the fictitiously named Respondents/Defendants and Real Parties in Interest when
20 such information has been ascertained.

21 8. Petitioner is informed and believes, and thereon alleges that each fictitiously
22 named Respondent/Defendant and Real Party in Interest is responsible in some manner for the
23 occurrences herein alleged.

24 **JURISDICTION AND VENUE**

25 9. This Court has jurisdiction over this action pursuant to §§1095, 1094.5, and 187
26 of the California Code of Civil Procedure and §§21167, 21168, 21188.5 of the California Public
27 Resources Code.

28 ///

1 10. Venue is proper in this Court because the causes of action alleged in this Petition
2 mandate the oversight of State responsible and trustee agencies located in Sacramento, California
3 with oversight and responsibility over environmental protections for the benefit of Petitioner and
4 the entire State of California. The role of the CVRWQCB is to protect the water quality and the
5 beneficial use of water for the State (Water Code §§13240, 13241). Fish and wildlife resources
6 are held in trust for the people of the state by and through the CDF&W (Fish and Game Code
7 §711.7). Fish and Game Code §1801, provides that it is “the policy of the state to encourage the
8 preservation, conservation, and maintenance of wildlife resources under the jurisdiction and
9 influence of the state.” Proper venue for actions against state agencies is the County of
10 Sacramento Superior Court, where such agencies have identified such court by statute.

11 **GENERAL ALLEGATIONS**

12 11. On November 7, 1998, the voters of Yuba County approved Ordinance No. 1219
13 Yuba County Raceway Measure, “Measure R” to amend the Yuba County General Plan and
14 Zoning Ordinance to permit a Raceway and related uses in an area designated as a “Sports and
15 Entertainment” zone, comprising about 900 acres generally located south of the 40 Mile Road
16 interchange between California Highways 65 and 70 in Yuba County.

17 12. Measure R provides, in part, at Paragraph 6, p. 11: “This measure shall be
18 interpreted so as to be consistent with all federal and state laws, rules, and regulations...”; and at
19 Paragraph 4, p. 8: “A water system for public use and a sewage treatment and disposal system
20 shall be constructed in compliance with applicable standards.”

21 13. The Real Parties in Interest own property in the Raceway Property as follows:
22 Yuba County Entertainment owns Assessor Parcel Numbers 14-280-090; 093; 101; 094; and
23 Yuba County Motorplex owns Assessor Parcel Number 14-280-096. Petitioner alleges that
24 construction is ongoing on these properties in violation of various state and federal laws as set
25 forth below.

26 14. The Motorplex has never come to fruition since Measure R was passed in 1998,
27 and Petitioner is informed and believes that efforts to build a Motorplex have been abandoned.
28 The Raceway Property has been improved by an outdoor amphitheater in about 2000 (then the

1 “Bill Graham Presents Amphitheatre” now the “Toyota Amphitheatre”), which is currently in
2 use for outdoor concerts.

3 15. In March of 2000, a Waste Water Discharge Requirements Permit was issued by
4 the CVRWQCB for the “Yuba County Motorplex Waste Water Treatment Plant” (the “WWTP”)
5 for the planned Motorplex and Amphitheatre, which has and is currently being used to serve the
6 Amphitheater only. Petitioner is informed and believes that no subsequent amendment or
7 modification to this permit has ever been applied for or granted to upgrade or expand upon this
8 treatment plant.

9 16. Sometime in about 2002, Yuba County Entertainment sold an approximately 40-
10 acre parcel (APN 14-280-102) of the Raceway Property to the Estom Yumeka Maidu Tribe (the
11 “Tribe”) Enterprise Rancheria. This 40-acre parcel is subject to a 2002 Memorandum of
12 Understanding between the County and the Tribe. For simplicity, the parcel owned by the Tribe
13 will be described as the “40- acre parcel”.

14 17. In about 2007, the Department of the Interior, Bureau of Indian Affairs prepared a
15 Draft Environmental Impact Statement, which was released as final in 2009, for the purpose of a
16 gaming casino on the 40-acre parcel. This EIS did not address construction on the properties
17 owned by the Real Parties in Interest in the Raceway Property.

18 18. In December 2012, the 40-acre parcel sold to the Tribe was taken into Trust by
19 the Department of the Interior, Bureau of Indian Affairs for a gaming casino. The Trust property
20 is not the subject of this lawsuit, as it is no longer subject to the restrictions imposed by Measure
21 R. This lawsuit is limited to non-Trust, or the fee property owned by the Real Parties in Interest
22 not addressed as part of the Federal EIS for the gaming casino. However, plans for casino
23 development anticipated construction on property not held in Trust, and the federal
24 environmental documentation identified the need to obtain permits from CVRWQCB to expand
25 upon the WWTP, which is off Trust property, and any connections thereto which would occur
26 off the Trust property.

27 19. On March 24, 2017, the CVRWQCB acknowledged jurisdiction off-reservation
28 (the Raceway Property), including the construction of a pipeline to convey wastewater from the

1 casino to the existing Amphitheater waste water treatment plant. The CVRWQCB wrote in this
2 letter to Senator Nielsen that (letter summarized): if the construction off-site [meaning off Trust
3 and in the Raceway Property] disturbs more than an acre, then the following is required:

- 4 ➤ State Water Board general National Pollutant Discharge Elimination System Permit
5 (NPDES) for storm water discharges associated with construction activity, also called the
6 “construction storm water permit”.
- 7 ➤ Clean Water Act section 404 Permit from the Army Corps of Engineers may be required
8 due to the presence of waters of the United States along the pipeline route
- 9 ➤ Maybe also a Clean Water Act section 401 certification from the Central Valley Regional
10 Water Board for the pipeline, which is required as part of the 404 Permit.
- 11 ➤ Discharge from the existing WWTP is regulated by the waste discharge requirements of
12 the Central Valley Regional Water Board. The operator of the WWTP will need to
13 obtain an amendment to its water discharge requirements.
- 14 ➤ If the construction of the plant expansion and its associated disposal area disturbs an acre
15 or more of land, than the WTP operator will also need to obtain coverage under the
16 State Water Board’s construction storm water permit.

17 20. The property owned by the Real Parties in Interest in the Raceway Property is
18 California fee-ownership property subject to CEQA and all other local, state, and federal
19 environmental regulations.

20 21. Petitioner is informed and believes that sometime in late 2017, grading and
21 construction activities began in what it believed at the time was the 40-acre parcel. Petitioner is
22 informed and believes that these activities included, but were not limited to: significant grading
23 and earth moving activities; construction of a detention basin(s) surrounded by earthen berms;
24 installation of industrial sized pipes; and installation of industrial sized valves, without any
25 permits or environmental analysis.

26 22. On January 22, 2018, Petitioner sent a notice letter to Yuba County, with photos,
27 regarding the unpermitted construction activities in the 40-acre parcel, and cited various
28 violations of the MOU previously adopted by Yuba County and the Tribe applicable to the 40-
29 acre parcel. Among other deficiencies, Petitioner informed the County of substantial
30 construction, including a 4-inch water main and a massive retention pond, and put the County on

1 notice of its failure to obtain permits and comply with environmental mitigations. County never
2 responded to Petitioner's notice letter. At the time of this letter, Petitioner was under the
3 impression that these construction activities were occurring exclusively on Trust land, but is now
4 informed, based on site observations in about June 2018, that that the grading activities, pipes,
5 and detention pond were actually constructed on non-Trust land owned by the Real Parties in
6 Interest and most likely on parcels -101 and into parcel -96.

7 23. Yuba County has publicly denied any unpermitted construction activities
8 occurring off the 40-acre parcel. Petitioner conducted a site visit to view the Raceway Property
9 from public rights of way in about June 2018 and observed significant completed and on-going
10 grading, construction, a detention pond, pipes, and valves on fee property owned by the Real
11 Parties in Interest on parcels -101 and -96, and perhaps other parcels in the Raceway Property,
12 which repudiated prior statements of denial of construction by the County.

13 24. Based on the contradiction between denials of any construction by the County and
14 the patently observable completed and on-going construction in the Raceway Property observed
15 in June 2018, Petitioner began further investigation of construction activities in the Raceway
16 Property. On July 17, 2018, Petitioner sent a Public Records Act Request to Yuba County
17 requesting all grading or construction permits for property owned by the Real Parties in Interest
18 in the Raceway Property as follows: Yuba County Entertainment (APN 014-280-090, 3729
19 Forty Mile Road, Arboga, CA 95961; APN 014-280-093 [no site address]; APN 014-280-094
20 [no site address]; APN 014-280-101 [no site address]); and Yuba County Motorplex (APN 014-
21 280-096, 3359 Forty Mile Road, Arboga, CA 95961). As of the filing of this Petition, the
22 County has partially responded to this request with some documents, but the County has
23 produced no permits for the completed construction activities observed on parcels -101 and -96,
24 such as the grading, detention basin, pipes, and valves. Petitioner is informed and believes that
25 this construction was done without permits or any environmental analysis by the County in
26 violation of Measure R, and local, state, and federal laws intended to protect the environment.

27 25. On July 17 and 19, 2018, Petitioner also requested relevant documents from
28 CVRWQCB (July 17), CDF&G (July 19), and CVFPB (July 17). As of the present date,

1 Petitioner has received no documentation from any source which indicated that Real Parties in
2 Interest or Defendant/ Respondent Yuba County has sought permits from the state agencies for
3 the grading disturbance as required by law.

4 26. On July 30, 2018, Yuba County produced various documents in response to the
5 request referenced above, which included a 2-page grading plan for activities occurring on parcel
6 -101 (at the north-east corner), which appear to be unrelated to the construction activities
7 observed by Petitioner in June 2018 that span parcels -101 and -96 to the east of the Trust
8 property. The 2- page engineered grading and drainage plans were prepared for “Yuba County
9 Entertainment LLC” and reference Grading Permit # PWGR-18-0006. The grading plans were
10 signed by MHM Engineers, Sean Minard, PE on May 11, 2018, and were signed by Yuba
11 County, Van A. Boeck for Michael G. Lee, Public Works Director County of Yuba on May 30,
12 2018. The County did not produce the permit itself, the application, or any environmental
13 document associated with the permit or grading plans. The produced 2 page grading and
14 drainage plans have annotations that show a retention pond, fill pond area, two construction
15 trailers, multiple pads, and a relocated farmer berm road. Petitioner is informed and believes that
16 neither County nor any other Respondent/Defendant conducted any environmental analysis
17 under CEQA for these grading and drainage plans.

18 27. While Yuba County has not produced a grading permit that corresponds with the
19 2 page engineering plans described above, in about July 2018, Petitioner located an entry on a
20 Yuba County public database that indicates a permit was issued to the Real Parties in Interest as
21 follows: “Permit PWGR 18-0006; Type: PW Grading; Subtype: Land Leveling; Status: Issued;
22 Short description: Land leveling, partial pond filling; Applied: 5/25/2018; Approved: 5/30/18;
23 Issued: 5/30/18; Site Info: 40 Mile Road; Property Type: Parcel; APN: 014-280-101; Sect-Twp-
24 Rng: 221404’ Lot Acreage: 42.65.”

25 28. In about June 2018, Petitioner inspected files at the Yuba County Community
26 Development Department relative to the Raceway Property and discovered that in about 1999,
27 Yuba County Motorplex was issued a violation letter by the CVRWQCB for commencing
28 construction of the waste water treatment plan without the appropriate environmental analysis

1 and permits and issued 5 points of concerns relative to: wetlands violations, storm water
2 permits, sewage disposal, water quality certification, and CEQA violations. Records from the
3 County show that a meeting was held at the CVRWQCB Sacramento office regarding these
4 violations, and at the meeting the County acknowledged that it is the lead agency to certify
5 appropriate CEQA documents for activities in the Raceway site subject to CEQA.

6 29. Yuba County Code Section 11.25.060 provides in pertinent part that a grading
7 permit is required for any grading and/or other construction activity with ground disturbance of
8 more than one acre, or any grading and/or construction activity smaller than one acre but part of
9 a greater plan involving over one acre.

10 30. On July 26, 2018, Petitioner filed a code enforcement complaint with Yuba
11 County, putting Yuba County on further notice of the unlawful and unpermitted activity on the
12 Raceway Property, with no formal response as of the date of filing this Writ. Informally, County
13 advised Petitioner that much of the grading occurred on Trust land. Such statement ignores the
14 amount of grading occurring on parcels -101 and -96, and the manifest state permits required
15 before such grading was approved. Petitioner is informed and believes that Real Parties in
16 Interest have received no Cease and Desist letter.

17 31. Petitioner is informed and believes that neither Yuba County nor any of the state
18 agencies have enforced their obligations under CEQA and state laws in the Raceway Property.
19 No Respondent/Defendant has performed any environmental analysis for the completed worked
20 (grading, retention basin, pipe installation, valves) observed by Petitioner in June 2018 in the
21 Raceway Property, parcel -101 and possibly onto parcel -96, and these construction activities
22 were discretionary projects under CEQA. Petitioner is informed and believes, based on
23 observation and knowledge of the area, that parcels -101 and -96 in the Raceway Property
24 are/were the site of agricultural land (rice fields), possible wetlands, and habitat for protected
25 plants and species. The general area is known to be habitat for the garter snake, a protected
26 endangered species. In the absence of any environmental analysis by the lead agency,
27 Responsible and Trustee agencies becomes the lead agency under CEQA (14 Cal. Code Regs.
28 §15052). Petitioner is informed and believes, and thereon alleges that Yuba County has failed to

1 advise and consult with the Responsible and Trustee Agencies as required by Public Resources
2 Code §21080.3(a), and that the Responsible and Trustee agencies identified as
3 Respondents/Defendants have not taken any action as the lead agency as required by CEQA.

4 **STANDING, EXHAUSTION, AND RIPENESS**

5 32. There was no clearly defined administrative procedure for Petitioner to resolve its
6 concern over the grading/construction activities described herein since there was no notice, no
7 project defined, and no process for Petitioner to comment on the construction activities in the
8 Raceway Property, and therefore general principals of exhaustion of remedies do not apply.
9 (Pub. Res. Code §21177(e); *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114
10 Cal. App. 4th 689.) Nonetheless, Petitioner did make efforts to notify Yuba County and filed a
11 zoning complaint, described in Paras. 22-30 above, which has been ignored; and to the extent
12 any exhaustion provisions apply, has exhausted all administrative remedies available under these
13 facts.

14 33. Since January 2018, Petitioner has presented the Yuba County Board of
15 Supervisors with substantial evidence that construction activities were occurring in the 40-acre
16 parcel that would result in significant environmental effects on non-Trust property. Petitioner is
17 now informed and believes, based on documents obtained from Yuba County from Public
18 Records Act Requests, that the County was made aware of concerns from various other
19 stakeholders that unpermitted activity was occurring in the 40-acre parcel, and that the County
20 failed to adequately investigate these concerns. Had the County conducted minimally prudent
21 due diligence when it was notified of non-permitted work in the 40-acre parcel, it would have
22 identified the off -Trust construction activities observed by Petitioner in June 2018.

23 34. Petitioner was not aware, and had no reason to be aware of the off-Trust
24 construction activities until June 2018, when it conducted its own site visit. Until such time
25 Petitioner believed that the construction activates were being conducted in the Trust land, as
26 represented by the County. This Petition is timely filed within 180 days from the date of the
27 issuance of the May 2018 grading permit, and within 180 days from the date Petitioner
28 conducted this site visit to ascertain the nature and location of the grading/construction activities

1 in the Raceway Property. No hearing was held and no notice provided for any of the
2 construction activities described herein within the Raceway Property. (Pub. Res. Code
3 §155112(5), 180 days SOL when action taken without a formal decision.)

4 35. The construction activities observed in June 2018 and detailed in the 2-page
5 engineered grading and drainage plans were all in the Raceway Property owned by the Real
6 Parties in Interest, which is fee property, not Trust property. The observed and described
7 construction activities were/are discretionary in nature, requiring mandatory subjective findings.
8 Yuba County was required to exercise judgment and deliberation in determining whether and
9 how to approve these projects and what mitigations to impose. In the absence of any
10 environmental analysis by Yuba County, the ordinary lead agency, the Responsible Agencies
11 assume the role of the lead agency under CEQA (14 Cal. Code Regs. §15052). Responsible
12 Agencies can also mitigate or approve of projects separate and distinct of the lead agency (14
13 Cal. Code. Regs. §15040(b) 15096(g)). Trustee agencies have the same duties as Responsible
14 Agencies.

15 **WRIT OF MANDATE FOR FAILURE TO COMPLY WITH CEQA**
16 *(as to all Respondents/Defendants/Real Parties in Interest)*

17 36. Petitioner realleges and incorporates herein by reference the allegations contained
18 in Paragraphs 1 through 35, above.

19 37. Yuba County failed to proceed in the manner required by law, including CEQA,
20 State Planning and Zoning Law, the Yuba County Ordinance Codes, and Measure R, by failing
21 to comply with state and federal law, and failing to conduct any environmental analyses as
22 required by CEQA for the activities described in the grading permit, PWGR 18-0006, and for the
23 other grading/construction activities in the Raceway Property for which no permit was acquired,
24 and for failing to consult with the appropriate Responsible and Trustee Agencies (14 Cal. Code
25 of Regs. §15096(b)(1).)

26 38. The Responsible and Trustee Agencies failed to act in the manner required by
27 law, including CEQA, when they failed to assume lead agency duties in the absence of any
28 environmental analysis by the County (14 Cal. Code Regs. §15052(a)(3)), and failed to exercise

1 their discretionary authority over environmental impacts in the Raceway Property (14 Cal. Code
2 Regs. §15381). Such failure to act was a prejudicial abuse of discretion in their part to enforce
3 their laws and regulations for the benefit of Petitioner and the people of the State for those areas
4 within their jurisdiction. Protecting water quality and beneficial use of water, protecting species
5 and habitat, and flood control are all within the jurisdiction of the named Responsible and
6 Trustee agencies.

7 39. Petitioner and its members have a direct and beneficial interest in Respondents/
8 Defendants' full compliance with CEQA and all other applicable state and federal laws with
9 regard to all construction and grading occurring in the Raceway Property. Petitioner and its
10 members will be directly and substantially affected by the adverse environmental impacts that
11 may result from the unpermitted and unlawful activities in the Raceway Property.

12 40. Respondents/Defendants have a mandatory and public duty to comply with
13 CEQA, State Planning and Zoning Law, the County Ordinance Codes, and Measure R, and all
14 other applicable laws when approving of any construction projects in the Raceway Property.

15 41. Petitioner is informed and believes that Respondents/Defendants have taken no
16 action on the completed and on-going grading and construction activities in the Raceway
17 Property to prevent further environmental damage, and have failed to comply with CEQA and
18 other applicable laws, and therefore Petitioner's claim is ripe for review.

19 42. Petitioner has standing to bring this action as its members include residents,
20 property owners, voters, and taxpayers in and around Nevada and Yuba Counties who are
21 beneficially interested in the approval of the Project. Separately, Petitioner has standing to bring
22 this action because it seeks to compel a public duty from all Respondents/Defendants, including
23 Yuba County, and the Responsible and Trustee Agencies, to ensure that Real Parties comply
24 with state and local land use and environmental laws.

25 43. Petitioner has a right to enforce Respondents/Defendants' mandatory duties under
26 state and local law related to the past and on-going discretionary construction activities in the
27 Raceway Property.

28 ///

1 44. Petitioner does not have a plain, speedy, or adequate remedy in the ordinary
2 course of law.

3 45. A clear and significant benefit will be conferred upon the general public and
4 Petitioner by Respondents/Defendants fully satisfying the requirements of state and local law
5 with respect to past and on-gong construction activities in the Raceway Property. A clear and
6 significant benefit will be independently conferred upon the general public by Respondents/
7 Defendants fully satisfying the requirements of CEQA, State Planning and Zoning Law, and
8 applicable County Zoning Ordinances and planning documents. In instituting this action,
9 Petitioner seeks to procure enforcement of a mandatory duty. The public, of which Petitioner's
10 members are members, is vitally and beneficially interested in assuring that the mandate of law is
11 fully satisfied and fulfilled. Granting the relief requested by Petitioner would confer a significant
12 benefit on a large class of persons, in that fundamental rules of law would be affected.

13 46. By the authority of Code of Civil Procedure §§1085 and 1094.5, Government
14 Code §65009, and Public Resources Code §§21168, 21168.5, and 21168.9, this Court has
15 jurisdiction to issue a Writ of Mandate mandating that Respondents/Defendants comply with
16 CEQA and applicable land use and environmental laws; and to order that all construction and
17 grading activities stop in the Raceway Property until evaluation by all relevant state, federal, and
18 local land use agencies is completed

19 47. Respondents/Defendants committed a prejudicial abuse of discretion and failed to
20 proceed in the manner required by law by allowing grading and construction activities to occur
21 in the Raceway Property that has occurred and is on-going, all without any environmental review
22 under CEQA, which amounts to a failure to sufficiently identify, analyze, disclose, and mitigate
23 significant environmental impacts from the Project.

24 48. Petitioner is informed and believes that neither Yuba County, nor Water Board,
25 nor Department of Fish and Wildlife, nor Central Valley Flood Protection Board has evaluated
26 the environmental impacts listed in the March 24, 2017 letter from the CVRWQCB to Senator
27 Nielsen referenced in Para. 19 above. This letter identifies multiple environmental impacts,
28 including loss of agricultural land, which would need to be evaluated and the appropriate permits

1 obtained prior to any of the past work, and should be evaluated prior to any future grading/
2 construction on the Raceway Property.

3 49. Upon discovery, Petitioner has made all Respondents/Defendants aware of the
4 construction activities in the Raceway Property, yet these activities appear to be on-going,
5 without any environmental analysis from Respondents/Defendants in abdication of their duties to
6 protect the public and the environment under CEQA, and relevant other local, state, and federal
7 laws and permitting processes designed to protect the environment.

8 50. In the absence of any environmental analysis under CEQA by Yuba County, or
9 any of the named Responsible and Trustee agencies, and in the absence of any of these agencies
10 taking on lead agency duties as required by CEQA, or serving cease and desist notices upon Real
11 Parties for failure to obtain relevant permits, all named Respondents/Defendants have failed to
12 exercise their independent discretion relative to environmental impacts in the Raceway Property,
13 as required by State law.

14 51. Petitioner is informed and believes that significant environmental degradation has
15 occurred and will continue to occur due to Respondents/Defendants' failure to enforce CEQA,
16 and state and federal laws and regulations against the projects within the Raceway Property.
17 Petitioner does not know and cannot know the full effect of the environmental impacts, since no
18 environmental analysis has occurred, no project has been described, and no permits or permit
19 applications have been provided to Petitioner, despite written request being made.

20 52. Accordingly, Respondents/Defendants have prejudicially abused their discretion
21 in allowing grading/construction that are discretionary to occur in the Raceway Property with no
22 analysis under CEQA, and by failing to adequately evaluate and mitigate the effects of Raceway
23 Property construction related impacts to the environment, and require Real Parties to obtain all
24 necessary federal and state permits.

25 53. Petitioner has complied with the requirements of Pub. Res. Code §21167.5 by
26 mailing advance written notice of this action to Respondents/Defendants.

27 54. Petitioner will comply with Pub. Res. Code §21167.7 and Code of Civ. Proc.
28 §388 by notifying the Attorney General of California of the commencement of this action.

1 grading/construction activities in the Raceway Property.

2 59. Petitioner has no adequate remedy at law for the injuries that are now threatened
3 and actually suffered, because an award of monetary damages would not provide an adequate
4 remedy for the damage to the environment, loss of wetlands, loss of habitat, and possible species
5 takes, all of which are permanent in nature and cannot be undone.

6 **DECLARATORY RELIEF**
7 *(as to all Respondents/Defendants/Real Parties in Interest)*

8 60. Petitioner re-alleges and incorporates herein by reference the allegations
9 contained in Paragraphs 1 through 59, above.

10 61. An actual controversy has arisen and now exists between Petitioner and
11 Respondents/Defendants concerning their respective rights and duties, in that Petitioner
12 contends: (1) that Real Parties in Interests have conducted unlawful and unpermitted grading
13 and construction activities in the Raceway Property prior to applying for a grading permit; (2)
14 that the activities planned and conducted by Real Parties required review and permitting by
15 Respondents/Defendants, which were discretionary and required CEQA review and the issuance
16 of various state permits prior to proceeding; and (3) that the named Respondent/Defendant State
17 Agencies have failed and refused to stop all described construction, although they have
18 previously confirmed the necessity of the state and federal permits identified in Paragraph 19
19 above. Petitioner is informed and believes that Respondents/Defendants dispute these
20 contentions and contend either that the described activity is occurring within the Trust Property
21 and is not subject to State jurisdiction, and/or that the off-Trust construction is not subject to
22 CEQA and the state and federal permitting requirements previously described in Para. 19 above.

23 62. Petitioner desires a judicial determination of Respondents/Defendants' rights and
24 duties relative to enforcing CEQA and all other environmental laws for the benefit of the public
25 and the State of California, and a declaration as to Respondents/Defendants that all grading/
26 construction activity in the Raceway Property is subject to CEQA and the relevant state and
27 federal environmental laws, and whether Yuba County should act as the lead agency, or whether
28 by its failure and refusal to act it has abrogated its responsibility under state law, and which of

1 the other identified state agencies should act as lead agency; and that the identified lead agency
2 should consult with the named Responsible and Trustee Agencies relative to the past and future
3 grading/construction activities on the Raceway Property; and halt all construction activity until
4 such review is complete and all necessary federal and state permits are obtained.

5 63. A judicial declaration is necessary and appropriate at this time under the
6 circumstances in order that Petitioner may ascertain the rights and duties of Respondents/
7 Defendants. The burden now being suffered by the unsettled state of affairs is that no
8 environmental analysis has been or is being conducted for the grading/construction activities in
9 the Raceway Property, no agency is taking the lead regarding the required CEQA analysis, and
10 Real Parties in Interest have been and are now permitted to undertake grading/construction with
11 no oversight by any agency, all to the detriment of Petitioner, the environment, and the residents
12 of the State, as the environment has and will continue to be damaged for which there is no
13 adequate remedy at law.

14 64. Petitioner has exhausted all administrative remedies. Respondents/Defendants
15 have been put on notice of the unlawful and unpermitted grading/construction activities and
16 Petitioner has issued a Notice of Code Violation to the County; all without a response regarding
17 the unpermitted and unlawful activity and what steps will be taken to make sure CEQA and other
18 environmental laws are enforced against the Real Parties in Interest in the Raceway Property.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner prays as follows:

21 1. That this Court issue a peremptory writ of mandate:

22 a. Commanding Respondents/Defendants to comply with CEQA relative to all
23 grading/construction activities, past and on-going, in the Raceway Property;

24 b. Commanding Respondents/Defendants to immediately require suspension of all
25 grading/construction activities occurring on the Raceway Property until the appropriate CEQA
26 analysis is conducted;

27 c. Commanding all Respondents/Defendants to complete the necessary reviews
28 required by state law to determine, since the ongoing grading disturbs more than an acre, which

1 (or all) of the following are required:

2 (1) State Water Board general National Pollutant Discharge Elimination System
3 Permit (NPDES) for storm water discharges associated with construction activity,
4 also called the “construction storm water permit”.

5 (2) Clean Water Act section 404 Permit from the Army Corps of Engineers may
6 be required due to the presence of waters of the United States along the pipeline
7 route.

8 (3) Clean Water Act section 401 certification from the Central Valley Regional
9 Water Board for the pipeline, which is required as part of the 404 Permit.

10 (4) An amendment to Real Parties’ WWTPs water discharge requirements, if
11 necessary.

12 (5) A construction storm water permit also issued by Central Valley Regional
13 Water Board.

14 d. Commanding Yuba County to annul or set aside Grading Permit # PWGR-18-
15 0006 until Respondents/Defendants comply with CEQA and state and federal law;

16 2. For a stay, preliminary restraining order, and/or preliminary and permanent
17 injunction restraining Respondents/Defendants and Real Parties in Interest from taking any
18 action to carry out any construction within the Raceway Property pending the outcome of this
19 litigation;

20 3. For a declaration that unlawful and unpermitted construction activities have
21 occurred in the Raceway Property which are subject to the jurisdiction of Respondents/
22 Defendants, for which an after-the-fact CEQA analysis must be conducted by the lead agency to
23 be determined by the Court, and all necessary local, state, and federal permits obtained;

24 4. That Petitioner be awarded the cost incurred in bringing this action, and
25 reasonable attorney’s fees pursuant to Code of Civil Procedure §1021.5, the “common benefit”
26 theory, Government Code §800, or as otherwise provided by law or equity; and

27 ///

28 ///

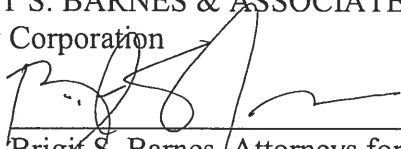
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5. That the Court grant such other and further relief as may be equitable and just.

Respectfully submitted,

Dated: August 14, 2018

BRIGIT S. BARNES & ASSOCIATES, INC.,
A Law Corporation

By: 

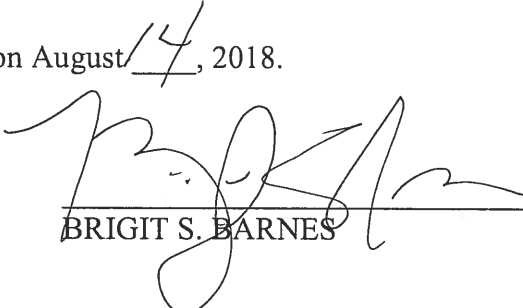
Brigit S. Barnes, Attorneys for Petitioner
GRASS VALLEY NEIGHBORS

VERIFICATION

I am one of the Attorneys of Record on whose behalf the foregoing Petition for Writ of Mandate-Complaint is verified. I have read it and know the contents thereof. I am informed and believe the matters therein to be true, and on that ground allege the matters stated therein are true. I make this Verification because the party I represent is absent from the County of Placer where I have my office.

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

Executed at Loomis, California on August 14, 2018.



BRIGIT S. BARNES

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