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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

DEC 17 2019

BY   
ELYZABETH GOMEZ, DEPUTY

6 Attorneys for Petitioner NATURAL RESOURCES  
7 DEFENSE COUNCIL, INC.

8  
9 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN BERNARDINO

11 NATURAL RESOURCES DEFENSE  
12 COUNCIL, INC.,

13 Petitioner,

14 v.

15 SAN BERNARDINO COUNTY; CITY OF  
16 CHINO HILLS; CITY OF RANCHO  
17 CUCAMONGA; CITY OF REDLANDS, on  
18 behalf of themselves and similarly situated  
19 local agencies,

20 Respondents.

CIV DS 1937969

Case No. \_\_\_\_\_

CLASS ACTION

VERIFIED PETITION FOR WRIT OF  
MANDATE (C.C.P. §1085)

1           1.       Petitioner Natural Resources Defense Council (“NRDC”) submits this petition on its  
2 own behalf and on behalf of its members to challenge the failure of Respondents San Bernardino  
3 County, City of Chino Hills, City of Rancho Cucamonga, and City of Redlands (“Respondents” or  
4 “Named Respondents”), and members of the proposed respondent class to comply with the reporting  
5 requirements set forth in the implementing regulations for the Water Conservation in Landscaping  
6 Act. *See* Cal. Code Regs. tit. 23, §495.

7           2.       This petition challenges the widespread failure of hundreds of cities and counties  
8 throughout California, including San Bernardino County and the cities of Chino Hills, Rancho  
9 Cucamonga and Redlands, to report annually on the results of their permitting programs for new  
10 irrigated landscapes and major renovations of irrigated landscapes, in violation of state law, as set forth  
11 in Section 495 of Chapter 2.7 of Title 23 of the California Code of Regulations.

12          3.       The use of landscaping in urban areas provides significant benefits to the quality of life  
13 in California. Urban landscapes can offer fire protection, prevent erosion, clean the air and water,  
14 replace ecosystems lost due to development, and provide areas for recreation. However, the use of  
15 landscaping in urban areas also requires a significant amount of water. Roughly half of California’s  
16 potable water supply is used for urban landscape irrigation.

17          4.       Substantial water savings can be gained through water-efficient landscape design and  
18 proper installation. Such water-efficiency measures help to make more effective use of current water  
19 supplies and to enhance California’s resilience to drought conditions in the future.

20          5.       Since 2015, the State has required cities and counties to report on their local landscape  
21 permitting programs. This reporting requirement is a key element in a broader set of requirements  
22 imposed on cities and counties pursuant to the Water Conservation in Landscaping Act (“the Act”),  
23 Cal. Gov’t Code §§65591-65599, and its implementing regulations.

24          6.       The Act, passed in 1990, is intended to promote “the conservation and efficient use of  
25 water and to prevent the waste of this valuable resource.” Cal. Gov’t Code §65593(c). Under the Act,  
26 California cities and counties are required to meet certain water efficiency standards in landscaping by  
27 either adopting, implementing, and enforcing the Department of Water Resources’ (“DWR”) Model  
28 Water Efficient Landscape Ordinance (“Model Ordinance” or “MWELO”), Cal. Code Regs. tit. 23,

1 §490 et seq., or a comparably effective local ordinance (often referred to as a local “WELO”). *See* Cal.  
2 Gov’t Code §§65591-65599; Cal. Code Regs. tit. 23, §490. The Act thus places the responsibility on  
3 local governments, not water suppliers or users, to ensure that new irrigated landscapes in their  
4 jurisdictions are designed and installed to be water-efficient.

5 7. In 2014, then-Governor Edmund G. Brown proclaimed a State of Emergency  
6 throughout California due to the severe drought conditions, and in 2015, as part of the State’s response  
7 to the drought, then-Governor Brown issued Executive Order B-29-15, which directed DWR to revise  
8 the Model Ordinance. As so revised, the 2015 version of the Model Ordinance sets more stringent  
9 water efficiency requirements, which are necessary to address the increasingly critical need to avoid  
10 waste and excessive use of drinking water supplies in California.

11 8. In addition to these substantive requirements regarding enforcement of efficiency  
12 standards in landscaping, the State requires covered jurisdictions to submit reports to DWR regarding  
13 their local landscape permitting programs. *See* Cal. Code Regs. tit. 23, §495 (referred to herein as the  
14 “Water Efficiency Reporting Requirement”). These reports provide valuable information regarding  
15 whether cities and counties are implementing the Act, the scope of permitting activities in the  
16 jurisdictions subject to water efficiency standards, the extent to which jurisdictions are enforcing the  
17 State’s Model Ordinance or have adopted a comparably effective local ordinance, and – for a  
18 jurisdiction that has adopted a local ordinance – how that local ordinance differs from the State’s  
19 Model Ordinance.

20 9. This petition does not challenge any particular jurisdiction’s failure to adopt or enforce  
21 the Model Ordinance or a comparably effective local ordinance. Instead, it challenges the widespread  
22 failure of Respondents and numerous other cities and counties throughout California to comply with  
23 the ministerial duty to submit annual reports to DWR, as required by the Water Efficiency Reporting  
24 Requirement.

25 10. The continued failure by Respondents and members of the proposed respondent class to  
26 comply with this ministerial duty of providing information that enables the State and the public to  
27 assess compliance with water efficiency standards cannot be countenanced in the face of the worsening  
28 threats of drought and water insecurity in this State. During the State’s most recent drought, the

1 State's water supply became severely depleted, with record low snowpack in the Sierra Nevada  
2 Mountains, decreased water levels in reservoirs, reduced flows in rivers, and shrinking water supplies  
3 in groundwater basins. The drought conditions caused severe problems, including drinking water  
4 shortages in communities across the State, diminished water for agricultural production, degraded  
5 habitat for many fish and wildlife species, depleted groundwater, and increased risk of subsidence and  
6 wildfires, among other harmful effects. These serious conditions underscore the need to focus on  
7 water efficiency in urban landscapes and for California cities and counties to comply with basic  
8 reporting requirements that are integral to the State's overall policy and regulatory framework.

9 11. The failure of Respondents and the proposed respondent class to comply with the Water  
10 Efficiency Reporting Requirement has deprived NRDC, its members and the general public of critical  
11 information regarding local government water conservation efforts. In light of that failure, NRDC  
12 requests that this Court issue a writ of mandate, pursuant to California Code of Civil Procedure section  
13 1085, to compel Respondents and all members of the proposed respondent class to: (A) submit to  
14 DWR complete and accurate annual reports, as required by Cal. Code Regs. tit. 23, §495, on the form  
15 provided by DWR on its website, by the deadline(s) established by regulation for calendar year 2019  
16 and each year thereafter, and (B) promptly submit to DWR complete and accurate annual reports, as  
17 required by Cal. Code Regs. tit. 23, §495, for each of the years 2015, 2016, 2017, and/or 2018 that  
18 have not already been submitted to DWR as of the date of this petition, using the form provided by  
19 DWR on its website.

20 12. NRDC brings this petition against Respondents and against a proposed respondent class  
21 comprising all local agencies, as defined in Cal. Gov't Code §65592 and Cal. Code Regs. tit. 23,  
22 §491(oo), that as of the date of this petition have not submitted to DWR annual reports for one or more  
23 of the following years: 2015, 2016, 2017, and/or 2018.

#### 24 **JURISDICTION AND VENUE**

25 13. This Court has jurisdiction pursuant to section 10 of article VI of the California  
26 Constitution, section 1085 of the Code of Civil Procedure, and section 65599 of the Government Code.

27 14. Venue is proper pursuant to sections 394 and 395 of the Code of Civil Procedure  
28 because this is a proceeding against San Bernardino County and the cities Chino Hills, Rancho

1 Cucamonga, and Redlands, which are in San Bernardino County. *See* Cal. Civ. Proc. Code §§394(a),  
2 395.

3 15. NRDC has standing to bring this action on behalf of its members. NRDC has more than  
4 70,000 members who reside within California, including members who reside in the cities of Chino  
5 Hills, Rancho Cucamonga, and Redlands. NRDC has more than 800 members who reside in San  
6 Bernardino County. These members have a clear, present, and beneficial right to and interest in  
7 Respondents' and proposed respondent class members' submission of information regarding water-  
8 conservation measures intended to help protect California's water supply. The interest in ensuring  
9 water efficiency in landscaping and conserving water, which NRDC seeks to protect by this petition, is  
10 germane to NRDC's purpose to promote water conservation in California.

11 16. NRDC does not have a plain, speedy, or adequate remedy at law unless this Court  
12 grants the requested writ of mandate to require Respondents and the proposed respondent class to  
13 comply with the Water Efficiency Reporting Requirement. In the absence of a remedy, the failure of  
14 Respondents and members of the proposed respondent class to report on their landscaping permitting  
15 activities, including their implementation and enforcement of either the Model Ordinance or a local  
16 ordinance that is at least as effective in conserving water, will remain a violation of state law.

17 **PARTIES**

18 17. NRDC is a national, not-for-profit membership corporation that was founded in 1970.  
19 NRDC has more than 70,000 members who reside within California. NRDC maintains offices in  
20 Santa Monica and San Francisco, California, as well as in other states and abroad. NRDC's purposes  
21 include environmental education and the preservation, protection, and defense of the environment,  
22 public health, and natural resources, including promotion of water conservation in California and  
23 developing and implementing effective responses to California's drought. To this end, NRDC works  
24 to ensure compliance with laws designed to conserve water resources. NRDC brings this action on its  
25 own behalf and on behalf of its members.

26 18. NRDC's members residing in California depend upon a reliable, secure water supply.  
27 Respondents' and proposed respondent class members' failure to comply with the Water Efficiency  
28

1 Reporting Requirement harms NRDC and its members throughout California by impeding efforts to  
2 conserve water and threatening the long-term viability of California’s water supply.

3 19. The requested relief will help achieve NRDC’s goal of promoting water conservation in  
4 California. The relief will redress NRDC’s members’ injuries by ensuring that Respondents provide  
5 information regarding water-conservation measures intended to help protect California’s water supply  
6 through the submission of annual reports to DWR.

7 20. Named Respondent San Bernardino County is a California county and has  
8 responsibility for land use and construction permitting. San Bernardino County has approximately 2.2  
9 million residents living within approximately 20,000 square miles.

10 21. Named Respondent San Bernardino County is a “local agency” within the meaning of  
11 the Act, Cal. Gov’t Code §65592(b), and is responsible for adopting, implementing, and enforcing a  
12 water efficient landscape ordinance, *see* Cal. Code Regs. tit. 23, §491(oo).

13 22. Named Respondent City of Chino Hills is a California city and has responsibility for  
14 land use and construction permitting. The City of Chino Hills has approximately 83,000 residents  
15 living within approximately 45 square miles.

16 23. Named Respondent City of Chino Hills is a “local agency” within the meaning of the  
17 Act, Cal. Gov’t Code §65592(b), and is responsible for adopting, implementing, and enforcing a water  
18 efficient landscape ordinance, *see* Cal. Code Regs. tit. 23, §491(oo).

19 24. Named Respondent City of Rancho Cucamonga is a California city and has  
20 responsibility for land use and construction permitting. City of Rancho Cucamonga has approximately  
21 177,000 residents living within approximately 40 square miles.

22 25. Named Respondent City of Rancho Cucamonga is a “local agency” within the meaning  
23 of the Act, Cal. Gov’t Code §65592(b), and is responsible for adopting, implementing, and enforcing a  
24 water efficient landscape ordinance, *see* Cal. Code Regs. tit. 23, §491(oo).

25 26. Named Respondent City of Redlands is a California city and has responsibility for land  
26 use and construction permitting. City of Redlands has approximately 71,000 residents living within  
27 approximately 36 square miles.



- 1 “(1) State whether you are adopting a single agency ordinance or a regional agency  
2 alliance ordinance, and the date of adoption or anticipated date of adoption.
- 3 (2) Define the reporting period. The reporting period shall commence on December 1,  
4 2015 and the end on December 28, 2015. For local agencies crafting regional  
5 ordinances with other agencies, there shall be an additional reporting period  
6 commencing on February 1, 2016 and ending on February 28, 2016. In subsequent  
7 years, all local agency reporting will be for the calendar year.
- 8 (3) State if using a locally modified Water Efficient Landscape Ordinance (WELo) or  
9 the [Model Ordinance]. If using a locally modified WELo, how is it different than [the  
10 Model Ordinance], is it at least as efficient as [the Model Ordinance], and are there any  
11 exemptions specified?
- 12 (4) State the entity responsible for implementing the ordinance.
- 13 (5) State number and types of projects subject to the ordinance during the specified  
14 reporting period.
- 15 (6) State the total area (in square feet or acres) subject to the ordinance over the  
16 reporting period, if available.
- 17 (7) Provide the number of new housing starts, new commercial projects, and landscape  
18 retrofits during the reporting period.
- 19 (8) Describe the procedure for review of projects subject to the ordinance.
- 20 (9) Describe actions taken to verify compliance. Is a plan check performed; if so, by  
21 what entity? Is a site inspection performed; if so, by what entity? Is a post-installation  
22 audit required; if so, by whom?
- 23 (10) Describe enforcement measures.
- 24 (11) Explain challenges to implementing and enforcing the ordinance.
- 25 (12) Describe educational and other needs to properly apply the ordinance.”

26 Cal. Code Regs. tit. 23, §495(b)(1)-(12).

27 32. As of the date of this petition, the DWR website makes available forms for filing annual  
28 reports, as well as links to reports filed by covered jurisdictions for 2015, 2016, 2017, and 2018, at



1 <https://water.ca.gov/Programs/Water-Use-And-Efficiency/Urban-Water-Use-Efficiency/Model-Water->  
2 [Efficient-Landscape-Ordinance.](https://water.ca.gov/Programs/Water-Use-And-Efficiency/Urban-Water-Use-Efficiency/Model-Water-)

3 33. On or around November 1, 2019, based on the reports filed by covered jurisdictions  
4 with DWR and available publicly on DWR's website, more than 400 cities and counties had failed to  
5 file at least one report pursuant to the Water Efficiency Reporting Requirement for the years 2015,  
6 2016, 2017 and/or 2018.

7 34. On November 15, 2019, NRDC emailed and mailed correspondence to cities and  
8 counties that, according to DWR's website, had failed to file at least one report pursuant to the Water  
9 Efficiency Reporting Requirement for the years 2015, 2016, 2017, and/or 2018, and urged those cities  
10 and counties to review the Water Efficiency Reporting Requirement and to submit the necessary  
11 reports to DWR.

12 35. As a result of NRDC's correspondence, multiple jurisdictions filed reports with DWR.  
13 Even as some jurisdictions come into compliance with the Water Efficiency Reporting Requirement,  
14 more than 300 jurisdictions around the State still have not fulfilled their ministerial duty to file reports  
15 with DWR.

16 ***B. Named Respondents' and Members of the Proposed Respondent Class' Noncompliance***

17 36. On information and belief, Named Respondent San Bernardino County failed to submit  
18 annual reports regarding its water efficient landscape ordinance, and implementation and enforcement  
19 of that ordinance, for the calendar years 2015, 2016, 2017, and 2018, in violation of Cal. Code Regs.  
20 tit. 23, §495(a), (b).

21 37. On information and belief, Named Respondent City of Chino Hills failed to submit  
22 annual reports regarding its water efficient landscape ordinance, and implementation and enforcement  
23 of that ordinance, for the calendar years 2015, 2016, and 2017, in violation of Cal. Code Regs. tit. 23,  
24 §495(a), (b).

25 38. On information and belief, Named Respondent City of Rancho Cucamonga failed to  
26 submit annual reports regarding its water efficient landscape ordinance, and implementation and  
27 enforcement of that ordinance, for the calendar years 2015 and 2016, in violation of Cal. Code Regs.  
28 tit. 23, §495(a), (b).



1 submit complete and accurate annual reports for the years 2015, 2016, 2017, and/or 2018 to DWR; and  
2 whether the Court may require members of the proposed respondent class to submit complete,  
3 accurate, and timely reports for 2019 and each year thereafter. These common questions of law and  
4 fact predominate over any questions affecting only individual respondent class members in this action.

5 44. Respondents San Bernardino County, City of Chino Hills, City of Rancho Cucamonga,  
6 and City of Redlands' defenses are typical of the claims or defenses of the proposed respondent class.  
7 Respondents and the members of the proposed respondent class are local agencies, as defined in Cal.  
8 Gov't Code §65592(b) and Cal. Code Regs. tit. 23, §491(oo), that have identical reporting duties under  
9 the Act and its implementing regulations.

10 45. Respondents San Bernardino County, City of Chino Hills, City of Rancho Cucamonga,  
11 and City of Redlands will fairly and adequately represent the interests of the proposed respondent class  
12 because they have the same duties under the Acts and its implementing regulations as every other  
13 member of the proposed respondent class.

14 46. This suit is properly maintained as a writ petition with a respondent class because  
15 common questions of law and fact predominate over any questions affecting only individual members  
16 of the proposed respondent class. For all these and other reasons, a class action is superior to other  
17 available methods for the fair and efficient adjudication of the controversy set forth herein.

18 **CAUSE OF ACTION**

19 **(Writ of Mandate, Code of Civil Procedure Section 1085)**

20 47. NRDC incorporates by reference the allegations set forth in the previous paragraphs.

21 48. Under the Act, California Government Code section 65591 et seq. and its implementing  
22 regulations, *see* Cal. Code Regs. tit. 23, §495, Respondents and members of the proposed respondent  
23 class have a clear, present, and ministerial duty to submit reports regarding their water efficient  
24 landscape ordinances and implementation and enforcement of those ordinances.

25 49. Upon information and belief, Respondents and members of the proposed respondent  
26 class failed to submit required annual reports to DWR for the calendar years 2015, 2016, 2017, and/or  
27 2018, as required by Cal. Code Regs. tit. 23, §495(a), (b).

28 50. NRDC has a clear, present, and beneficial right to Respondents' and proposed

1 respondent class members' submission of the documentation required under the Act and its  
2 implementing regulations.

3 51. NRDC has no plain, speedy, and adequate remedy at law to compel Respondents and  
4 members of the proposed respondent class to comply with their legal obligations. Money damages  
5 would not redress the harms to NRDC's members and the public.

6 **PRAYER FOR RELIEF**

7 NRDC prays that this Court:

8 1. Issue an order certifying the proposed respondent class and appointing Respondents San  
9 Bernardino County, City of Chino Hills, City of Rancho Cucamonga, and City of Redlands as  
10 representatives of the respondent class;

11 2. Issue a writ of mandate requiring Respondents and members of the respondent class to  
12 submit to DWR complete and accurate annual reports, on the applicable form(s) provided by DWR on  
13 its website, by the deadline(s) established by regulation for 2019 and each year thereafter.

14 3. Issue a writ of mandate requiring Respondents and members of the respondent class to  
15 promptly submit to DWR complete and accurate annual reports for each of the years 2015, 2016, 2017,  
16 and/or 2018 that have not already been submitted to DWR as of the date of this petition, using the  
17 applicable form(s) provided by DWR on its website.

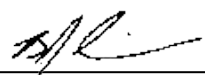
18 4. Issue an order requiring Respondents and members of the respondent class to document  
19 and report to the Court and to NRDC at reasonable intervals, Respondents' and respondent class  
20 members' compliance with their duties to file complete and accurate annual reports to DWR and their  
21 compliance with the writ of mandate issued by this Court.

22 5. Award NRDC reasonable attorneys' fees pursuant to Code of Civil Procedure section  
23 1021.5 and any other applicable law.

24 6. Award NRDC costs of suit pursuant to Code of Civil Procedure sections 1032 and  
25 1033.5 and any other applicable law.

26 7. Grant such other relief as may be just and proper.  
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**VERIFICATION**

I, Edward R. Osann, declare:

I am an employee of Natural Resources Defense Council and am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents. Other than those facts alleged on information and belief, the facts alleged in the above petition are within my own knowledge and I know them to be true. With respect to those facts alleged on information and belief, I believe those facts to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. This declaration is executed on Dec. 17, 2019, in Washington DC.

  
Edward R. Osann