

1 Paul Nicholas Boylan SBN 140098  
2 PAUL NICHOLÁS BOYLAN, ESQ.  
3 POB 719  
4 Davis CA 95617

5 Telephone: 530 297 7184  
6 Facsimile: 530 297 7168  
7 Email: pnboyland@gmail.com

8 Attorneys for Petitioner AQUALLIANCE, on its own behalf, and on behalf of the People  
9 of California

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**  
11 **COUNTY OF SACRAMENTO**

12 AQUALLIANCE

13 Petitioner/Plaintiff

14 v.

15 THE CALIFORNIA DEPARTMENT OF  
16 WATER RESOURCES and DOES 1-100

17 Respondent/Defendant

18 **Case No.**

19 **VERIFIED PETITION FOR**  
20 **ALTERNATE AND PEREMPTORY**  
21 **WRIT OF MANDATE; AND**  
22 **COMPLAINT FOR**  
23 **DECLARATORY AND**  
24 **INJUNCTIVE RELIEF RE ACCESS**  
25 **TO PUBLIC RECORDS AND**  
26 **INFORMATION**

## INTRODUCTION

AQUALLIANCE (Petitioner) requested access to records in the possession of and/or controlled by THE CALIFORNIA DEPARTMENT OF WATER RESOURCES (Respondent). Respondent has denied and continues to deny Petitioner's request for access to and copies of the records at issue, thereby violating Petitioner's constitutional, statutory, regulatory and common law rights to examine the records Respondent is withholding. In response, Petitioner now seeks a writ of mandate, declaratory and injunctive relief.

## JURISDICTION AND VENUE

1. The California Constitution provides:
  - a. The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny; and
  - b. statutes, court rules, or other authority shall be broadly construed to further the people's right of access information concerning the people's business, including but not limited to the writings of public officials; whereas statutes, court rules, or other authority shall be narrowly construed if an interpretation limits the same right of access. (Cal. Const. Art. I § 3(b) (1) and (2).)
2. The California Public Records Act (CPRA) and the case authority interpreting the CPRA provide:
  - a. The public's right to access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in California. (Government Code § 6250.)

- 1 b. A “public record” includes any writing containing information relating to  
2 the conduct of the public’s business prepared, owned, used, or retained by  
3 any state or local agency regardless of physical form or characteristics.  
4 (Government Code § 6252(e).)
- 5 c. Upon receiving a request for a copy of records that reasonably describes  
6 identifiable records, the CPRA imposes duties upon a local agency  
7 including but not limited to:
- 8 i. make reasonable efforts to locate records responsive to a request for  
9 those records, including canvassing agency officers, officials and  
10 employees (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608);
  - 11 ii. make an exact copy of the requested records promptly available to  
12 the requester (Government Code § 6253 (a) and (b);
  - 13 iii. affirmatively assisting the requester to access the records the  
14 requester seeks (Government Code § 6253.1);
  - 15 iv. reply to the request in writing within 10 days if the local agency  
16 intends on withholding records responsive to the request.  
17 (Government Code § 6253 (c); and
  - 18 v. avoid delaying the public’s exercise of the right to access public  
19 records and information.
  - 20 vi. The agency’s response must specifically identify the person or  
21 persons who made the decision to withhold records or information  
22 and the specific reasons why records or information responsive to the  
23 request is being withheld.
  - 24 vii. If the agency alleges that any of the information within any record  
25 responsive to the request is exempt from disclosure, the agency must  
26 produce the records with the allegedly exempt information redacted.  
27 (Government Code § 6253 (a).
  - 28

viii. If the requested records are maintained in an electronic form, the agency must provide access to or copies of these records in the electronic format in which the records are maintained. (Government Code § 6253.9.)

d. Whenever a member of the public believes that a local agency is improperly withholding a record, that member of the public may bring a verified petition to the superior court of the county where the records are situated for an order requiring the officer or person charged with withholding the records to disclose the public records/information. (Government Code §§ 6258 and 6259(a).)

e. If an *in camera* review discloses that public records or information are being unlawfully withheld from public access, the reviewing court shall order the agency respondent to make the record public. (Government Code § 6259(b).)

3. Code of Civil Procedure § 1085 et al. provides the public with the right to enforce the performance of ministerial duties and/or the right to correct abuses concerning discretionary duties.

4. Code of Civil Procedure § 1060 provides the public the right to seek a determination of the parties' statutory and/or contractual rights.

5. Code of Civil Procedure § 525 et al. provides the public with the right to injunctive relief to prevent or address irreparable injury.

6. Independent of the California Constitution and California statutes, California common law provides the public with the right to access records pertaining to the public's business. (*Sander v. State Bar of California* (2013) 58 Cal.4th 300; *Mushet v. Department of Public Service* (1917) 35 Cal. App. 630.)

7. Respondent has its primary place of business in Sacramento County. All of Petitioner's claims arose as a result of the acts or omissions of Respondent by and

1 through their officers and employee, all of which work, reside or conduct business in  
2 Sacramento County.

### 3 **FACTS COMMON TO ALL CLAIMS**

4 8. Petitioner realleges Paragraphs 1 through 7 as though fully incorporated  
5 herein, and to incorporate what follows into Paragraphs 1 through 7, above.

6 9. Petitioner requested access to and copies of identifiable public records that  
7 pertain to the public's business. Respondent eventually produced copies of and access to  
8 some, but not all, documents responsive to Petitioner's request. Respondent incorrectly  
9 alleged that, after a comprehensive search, no other records responsive to Petitioner's  
10 request existed or, if any were available, they are exempt from disclosure. A true copy of  
11 Petitioner's request and Respondent's written response to Petitioner's request is attached  
12 hereto as Exhibit 1.

13 10. Respondent failed to perform ministerial duties specified in the CPRA,  
14 including but not limited to listing the name and position of the person(s) responsible for  
15 the decision to withhold records responsive to Petitioner's request and conducting a  
16 search adequate to produce all records responsive to Petitioner's request. As to all  
17 discretionary duties specified in the CPRA, including but not limited to deciding on  
18 records search parameters and the decisions on whether or not to assert exemptions to the  
19 CPRA, Respondent abused its discretion, including but not limited to acting arbitrarily,  
20 capriciously or with intentional malice and creating and/or allowing unreasonable delay.

### 21 **IRREPARABLE HARM**

22 11. Petitioner realleges Paragraphs 1 through 10 as though fully incorporated  
23 herein and to incorporate what follows into Paragraphs 1 through 10, above.

24 12. Petitioner seeks to enforce its constitutional, statutory and common law  
25 rights to obtain copies of records related to the conduct of the public's business, the  
26 violation of which automatically establishes irreparable harm that cannot be remedied  
27 through an action at law. Unless Petitioner is provided access to and copies of the  
28

documents she seeks, the public's right to examine records pertaining to the public's business will continue to be frustrated and Petitioner's constitutional rights will continue to be violated.

13. Petitioner has no plain, speedy, and adequate remedy at law other than this action. Respondent has a clear, mandatory and ministerial duty to provide Petitioner with copies of the records he seeks. If Respondent's decision to deny Petitioner copies of these records is due to one or more discretionary acts or inactions, then Respondent has abused that discretion.

### **BENEFICIAL INTEREST**

14. Petitioner realleges Paragraphs 1 through 13 as though fully incorporated herein, and to incorporate what follows into Paragraphs 1 through 13, above.

15. As a holder of the aforementioned constitutional right to access public records, Petitioner has a present beneficial interest in the outcome of these proceedings and has a clear, present and substantial right to the relief sought herein. (Cal. Const. Art. 1 § 3; Government Code §§ 6253, 6253.9, 6258, 6259.)

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16. Petitioner realleges Paragraphs 1 through 15 as though fully incorporated herein, and to incorporate what follows into Paragraphs 1 through 15, above.

17. There are no administrative remedies that can or would remedy the violations of Petitioner's constitutional and statutory right to the records and information he seeks.

### **EXISTING CONTROVERSY**

18. Petitioner realleges Paragraphs 1 through 17 as though fully incorporated herein, and to incorporate what follows into Paragraphs 1 through 17, above.

19. An actual and existing controversy exists between the parties manifest by Petitioner's exercise of its right to access and obtain copies of public records and Respondent's refusal to satisfy its duties upon receiving a request for public records.

Respondent's inactions described herein violated and continue to violate the California Constitution (Art. I § 3(b)(1) and (2)), and Government Code § 6250 et sec. and California common law recognizing and assuring the public access to records pertaining to the public's business.

20. Petitioner seeks a judicial declaration that Respondent has violated and/or continues to violate these constitutional, statutory and administrative provisions and a declaration determining the respective rights and duties of the parties.

### **PRAYER FOR RELIEF**

#### **Declaratory Relief:**

■ The issuance of a declaratory judgment that, pursuant to Art. I § 3(b)(1) and (2) of the California Constitution, Respondent has the duties described herein the fulfillment of which are necessary to provide to the public, including but not limited to Petitioner, with copies of public records Petitioner seeks regardless of the form of these writings or where these writings are located and/or maintained, and to perform a search reasonably designed to locate the records Petitioner requests.

■ The issuance of a declaratory judgment that, pursuant to the California Public Records Act (Government Code § 6250 et sec.), Respondent has the duties Respondent owes to the public described herein; including but not limited to providing Petitioner with access to and copies of public records regardless of the form of these writings or where these writings are located and/or maintained, and to perform a search reasonably designed to locate the records Petitioner requests.

■ The issuance of a declaratory judgment that Respondent's actions and inaction complained of herein violates Art. I § 3(b)(1) and (2) of the California Constitution, and/or Government Code §§ 6253.

■ An award of costs and fees.

■ Imposition of a penalty for unreasonable delay independent of any other relief requested or awarded.

- Any other relief the Court deems just and proper.

**Injunctive Relief:**

■ The issuance of a temporary restraining order, preliminary injunction, and permanent injunction ordering Respondent to take all reasonable steps necessary to preserve the records at issue – thereby preserving this Court’s jurisdiction over the subject matter of this action - and provide Petitioner with access to and copies of all records and information responsive to Petitioner’s records request, in the formats required by law.

- An award of costs and fees.

■ Imposition of a penalty for unreasonable delay independent of any other relief requested or awarded.

- Any other relief the Court deems just and proper.

**California Public Records Act:**

■ A peremptory writ of mandate ordering Respondent to provide Petitioner access to and copies of all documents responsive to Petitioner’s records request; or

■ An alternative writ of mandate ordering Respondent to provide the relief requested above or to show cause why such an order should not issue.

■ Pursuant to the California Public Records Act (Government Code § 6253) Petitioner requests that the Court order Respondent to show cause why it should not be compelled to comply with all ministerial duties specified in the CPRA, correct all abuses of discretion pertaining to Respondent’s performance of any discretionary duties specified in the CPRA, and to provide access to and copies of the records Petitioner seeks.

- An award of costs and fees.

■ Imposition of a penalty for unreasonable delay independent of any other relief requested or awarded.

- Any other relief the Court deems just and proper.



**Traditional Mandamus:**

- A peremptory writ of mandate ordering Respondent to provide Petitioner with copies of all records and information responsive to Petitioner's request; or
- An alternative writ of mandate ordering Respondent to provide the relief requested above or to show cause why such an order should not issue.
- An award of costs and fees.
- Imposition of a penalty for unreasonable delay independent of any other relief requested or awarded.
- Any other relief the Court deems just and proper.

Dated: June 6, 2017

PAUL NICHOLAS BOYLAN, ESQ.

Paul Nicholas Boylan, Attorney for  
Petitioner, AQUALLIANCE

**VERIFICATION**

I, Barbara Vlamis, declare:

1. I am the Executive Director for AquAlliance, for Petitioner in this action. I make this verification of my own knowledge. I hereby verify that the factual matters stated in this Petition and Complaint are known to me personally and that they are true.

I declare under penalty of perjury under the laws of California that the foregoing is true and that this verification was executed in Chico, California, on June 6, 2017.

Barbara Vlamis