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11 *E&B NATURAL RESOURCES MANAGEMENT*
12 *CORPORATION; LAURIE VOLM; SHARYL G.*
13 *BLOOM, CO-TRUSTEE OF THE LYNN BLOOM*
14 *TRUST; RICHARD S. BLOOM, CO-TRUSTEE OF*
15 *THE LYNN BLOOM TRUST; JAMES C. ROTH;*
16 *DOLORES D. MICHAELSON; and MICHELE*
17 *KARPÉ*

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 E&B NATURAL RESOURCES
21 MANAGEMENT CORPORATION, a
22 California Corporation, LAURIE VOLM,
23 SHARYL G. BLOOM, co-trustee of The Lynn
24 Bloom Trust, RICHARD S. BLOOM, co-
25 trustee of The Lynn Bloom Trust, JAMES C.
26 ROTH, DOLORES D. MICHAELSON, and
27 MICHELE KARPÉ,

28 Plaintiffs and Petitioners,

v.

COUNTY OF ALAMEDA; ALAMEDA
COUNTY BOARD OF SUPERVISORS; and
DOES 1-50,

Defendants and Respondents.

CASE NO.

**VERIFIED COMPLAINT AND
PETITION FOR:**

1. Vested Rights/Equitable Estoppel
2. Writ of Administrative Mandamus
3. Violation of Federally Protected Civil
Rights, 42 U.S.C. § 1983, *et seq.*
4. Inverse Condemnation
5. Regulatory Taking
6. Declaratory Relief

JURY TRIAL DEMANDED

1 Plaintiff and Petitioner E&B Natural Resources Management Corporation (“E&B”) and
 2 Plaintiffs and Petitioners Laurie Volm, Sharyl G. Bloom, co-trustee of The Lynn Bloom Trust,
 3 Richard S. Bloom, co-trustee of The Lynn Bloom Trust, James C. Roth, Dolores D. Michaelson,
 4 and Michele Karpé (collectively with E&B, “Plaintiffs”) hereby bring this Verified Complaint
 5 and Petition against Defendants and Respondents County of Alameda (“County”), Alameda
 6 County Board of Supervisors (“Board,” and collectively with “County,” “Defendants”), and Does
 7 1-50, and allege as follows:

8 INTRODUCTION

9 1. This action seeks to overturn Defendants’ decision to not renew two conditional
 10 use permits (“CUPS”) they contend are predicates for E&B’s continued lawful operations at the
 11 Livermore Oil Field, an oil extraction and production facility that has been lawfully operating and
 12 contributing economically to the County and its citizens since 1966 (the “Property”). The Board
 13 made the unlawful decisions on July 24, 2018. In doing so, the Board disagreed with (a) the
 14 recommendation of County staff, (b) the recommendation of Chris Bazar, the Director of its own
 15 Community Development Agency, and (c) the unanimous approval by the Alameda County East
 16 County Board of Zoning Adjustments (“BZA”), all of which concluded that the CUPS should be
 17 renewed to best serve the public interest. The Board’s decision was arbitrary and capricious, and
 18 it violated Plaintiffs’ constitutional rights, among others.

19 2. More troubling, the Board willfully disregarded the fact that E&B has a vested
 20 right to continue operations at the Livermore Oil Field. California law recognizes there is a
 21 vested right to continue pre-existing, lawful land uses rendered nonconforming by subsequent
 22 zoning changes. *Edmonds v. County of Los Angeles*, 40 Cal. 2d 642, 651 (1953); *Hansen Bros.*
 23 *Enters., Inc. v. Bd. of Supervisors*, 12 Cal. 4th 533, 542 (1996). Here, upon information and
 24 belief, the County’s “Regulation of Exploratory and Production Oil Wells in Alameda County”
 25 policy, formally adopted on June 13, 1967 (“1967 Policy”) was the first regulation purporting to
 26 require the Livermore Oil Field to obtain CUPS for oil extraction and production. However,
 27 E&B’s predecessors-in-interest began operations at the Livermore Oil Field in 1966, and the
 28 Livermore Oil Field has been in continuous operation since 1966. E&B took over operations in

1 2006, when E&B acquired a partial interest in the Livermore Oil Field, and E&B assumed full
2 ownership of the Livermore Oil Field in 2008. E&B's rights to continue operations there are thus
3 vested as a matter of law. As a matter of law, the zoning regulations requiring CUPS and the
4 denial of CUPS cannot prohibit or interfere with E&B's operations, contrary to Defendants'
5 assertions. E&B and its predecessors-in-interest sought CUPS despite their vested rights out of
6 an abundance of caution and to seek to fully cooperate and comply with the County's demands.
7 The first CUPS for new operations at the facility were issued on March 15, 1967, identified as
8 "C-1702," "C-1703," and "C-1704." These CUPS were purported to permit the drilling of
9 exploratory wells. However, at least one production well already existed at the facility at this
10 time, operating without a CUP and predating the 1967 policy.

11 3. In the unlikely event the Court determines CUPS are necessary, Plaintiffs
12 respectfully submit that the Court should nevertheless invalidate the Defendants' decision,
13 because the Board acted arbitrarily, capriciously, and in excess of its jurisdiction, among other
14 things. The Board's resolution denying renewal of the CUPS is premised entirely upon purported
15 conclusions unsupported by the record and, in fact, contravened by the substantial evidence.
16 Allowing the Board's decision to stand would offend due process and the standards applicable to
17 the Board's decision making process.

18 4. Finally, Plaintiffs pray in the alternative for just compensation for the
19 unconstitutional taking that would result if the Defendants' decision is allowed to stand, and E&B
20 cannot continue its operation, as well as any other relief the Court deems proper for the reasons
21 complained herein.

22 **PARTIES**

23 5. E&B is, and at all relevant times herein was, a California corporation, and is
24 qualified to do business in the State of California and in the County of Alameda. E&B is, and
25 holds the vested rights to be, the operator of the Livermore Oil Field and is the applicant for the
26 CUP renewals. E&B instigated the original hearing on the CUPS, fully supported and
27 participated in the administrative review of the CUPS for the Livermore Oil Field before the
28 Board, and objected to the appeal of the BZA's approval that ultimately brought this matter

1 before the Board. E&B has a direct and substantial beneficial interest in obtaining the CUP
2 renewals for its Livermore Oil Field. Without CUPs for the Livermore Oil Field, the County will
3 insist that E&B is unable to conduct its oil and gas operations at the Livermore Oil Field, thereby
4 depriving Plaintiffs of all economic value from their property. However, E&B disputes this
5 contention, and maintains that it has a vested right to continue operations, as described in further
6 detail below.

7 6. Laurie Volm is, and at all relevant times herein was, an individual residing in the
8 State of Oregon, County of Multnomah. Ms. Volm is the owner of certain of the Livermore Oil
9 Field mineral rights leased to E&B at issue in this action, and she is thus adversely affected by
10 Defendants' unlawful actions complained of herein.

11 7. Sharyl G. Bloom, co-trustee of The Lynn Bloom Trust, is, and at all relevant times
12 herein was, an individual residing in the State of California, County of Los Angeles. The Lynn
13 Bloom Trust is the owner of certain of the Livermore Oil Field mineral rights leased to E&B at
14 issue in this action, and is thus adversely affected by Defendants' unlawful actions complained of
15 herein.

16 8. Richard S. Bloom, co-trustee of The Lynn Bloom Trust, is, and at all relevant
17 times herein was, an individual residing in the State of California, County of Riverside. The
18 Lynn Bloom Trust is the owner of certain of the Livermore Oil Field mineral rights leased to
19 E&B at issue in this action, and is thus adversely affected by Defendants' unlawful actions
20 complained of herein.

21 9. James C. Roth is, and at all relevant times herein was, an individual residing in the
22 State of California, County of Ventura. Mr. Roth is the owner of certain royalty interests in the
23 Livermore Oil Field mineral rights leased to E&B at issue in this action, and he is thus adversely
24 affected by Defendants' unlawful actions complained of herein.

25 10. Dolores D. Michaelson is, and at all relevant times herein was, an individual
26 residing in the State of California, County of Los Angeles. Ms. Michaelson is the owner of
27 certain royalty interests in the Livermore Oil Field mineral rights leased to E&B at issue in this
28 action, and she is thus adversely affected by Defendants' unlawful actions complained of herein.

1 11. Michele Karpé is, and at all relevant times herein was, an individual residing in the
2 State of California, County of Los Angeles. Ms. Karpe is the owner of certain royalty interests in
3 the Livermore Oil Field mineral rights leased to E&B at issue in this action, and she is thus
4 adversely affected by Defendants' unlawful actions complained of herein.

5 12. The County is, and at all relevant times herein was, a municipal corporation duly
6 organized and existing under the laws of the State of California.

7 13. The Board was established pursuant to sections 11 and 12 of the County Charter,
8 and County Code section 1.04.170, and is authorized to act on behalf of the County to hear
9 appeals of the decisions of the BZA on CUPS in the East County Area Plan under County Code
10 section 17.54.670. The Board acted on behalf of the County in hearing the appeal of the BZA's
11 decision granting the CUP renewals, and acted on behalf of the County in denying the CUP
12 renewals. The Board is the ultimate decision maker for the County and there are no other
13 administrative or other appeals available to Plaintiffs.

14 14. The true names and capacities, whether individual, corporate, partnership,
15 associate, or otherwise of DOES 1 through 50, are unknown to Plaintiffs who sue each defendant
16 by such fictitious names. Plaintiffs are informed and believe and based thereon allege each of the
17 defendants designated herein as a fictitiously named is, and in some manner, were responsible for
18 events and happenings referred to herein, either contractually or tortuously. When Plaintiffs
19 ascertain the true names of capacities of DOES 1 through 50, it will amend this complaint
20 accordingly.

21 **JURISDICTION AND VENUE**

22 15. This Court has jurisdiction over the subject matter of this action pursuant to
23 28 U.S.C. § 1331 because this action arises under the Constitution, laws, or treaties of the United
24 States, and pursuant to 28 U.S.C. § 1367 because remaining claims are so related that they form
25 part of the same case or controversy.

26 16. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
27 § 1391(a), (b)(1)-(2).
28

1 **INTRADISTRICT ASSIGNMENT**

2 17. Pursuant to Civil Local Rule 3-5, Plaintiffs allege this action that arises in
3 Alameda County shall be assigned to the San Francisco Division or the Oakland Division of the
4 Court. See Civil L.R. 3-2(d).

5 **FACTS**

6 18. The Livermore Oil Field consists of three parcels, each subject to a separate CUP.
7 Only two of the three parcels, and correspondingly two of the three CUPS, are the subject of the
8 challenged July 24, 2018 decision. The County's General Plan, East County Area Plan,
9 designates all three parcels as "Large Parcel Agriculture," zoning them "A" for Agricultural.
10 Under the County's Oil and Gas Ordinance, "[d]rilling for and removal of oil, gas or other
11 hydrocarbon substances" is explicitly permitted in the "A" district with a CUP. County Code
12 § 17.06.040(H). County staff has consistently recognized that oil extraction and production,
13 including E&B's operations, are consistent with the East County Area Plan and the "A" zone.

14 19. Defendants have taken the position that the Livermore Oil Field is also subject to
15 regulation under the 1967 Policy. *See* BZA Staff Report, PLN2017-00181, at 3 (May 24, 2018).
16 "Prior approvals of the subject Livermore Oil Field have been based on a policy adopted by the
17 Board of Supervisors [the 1967 Policy]." Out of an abundance of caution, E&B has at all relevant
18 times complied with the 1967 Policy, among others.

19 20. E&B's operations at the Livermore Oil Field consist primarily of nine wells and
20 production equipment, capable of producing 20-30 barrels of oil daily. E&B has invested
21 approximately \$1 million at the Livermore Oil Field, including installing fencing to enclose the
22 operational areas, replacing aging storage tanks, rebuilding the secondary containment, replacing
23 the flow lines, painting the pump jacks, and various other upgrades. E&B also consistently has
24 employed one full-time employee at the Livermore Oil Field. Its current employee is an Iraqi
25 War combat veteran.

26 **A. History of Operations and Current CUP Renewals**

27 21. The original operator, McCulloch Oil Corporation ("McCulloch"), began
28 operations at the Livermore Oil Field in December 1966. McCulloch submitted Notices of

1 Intention to Drill New Wells to the California Department of Conservation, Division of Oil, Gas
2 and Geothermal Resources (“DOGGR”) in December 1966 and April 1967, and drilled the wells
3 in December 1966, April 1967, and May 1967. All of these operations predate the 1967 Policy,
4 and they were substantially related to and in furtherance of the earliest operations and today’s
5 operations.

6 22. The original CUPS for the Livermore Oil Field, though unnecessary due to
7 McCulloch’s vested rights, were issued to McCulloch on August 7, 1967. Over the subsequent
8 decades of continuous operation at the Livermore Oil Field, at the expiration of each CUP,
9 McCulloch and its successor-in-interest successfully applied for and obtained renewal CUPS
10 from Defendants. McCulloch and its successor-in-interest, including E&B, have continuously
11 operated the oil wells and production equipment at the Livermore Oil Field.

12 23. Of course, by the time E&B assumed full ownership and operations in 2008, the
13 Livermore Oil Field was lawfully operating, including under three CUPS. E&B recently applied
14 for renewal of one of the CUPS, PLN2014-00043 (“Schenone Lease CUP”), and Defendants
15 renewed it on June 26, 2014. The Schenone Lease CUP remains a valid CUP at this time, but its
16 operation is dependent upon at least one of the other two CUPS, the denial of which are at issue
17 here, that expired in 2017 and 2018, respectively: (a) CUP PLN2017-00110 (“GIG Lease CUP”),
18 relating to mineral rights at 8467 Patterson Pass Road, Livermore, California, APN 099A-1650-
19 001-05; and, (b) CUP PLN2017-00181 (“Nissen Lease CUP”), relating to mineral rights at 8617
20 Patterson Pass Road, Livermore, California, APN 099A-1650-003-09. Denial of the GIG Lease
21 CUP and the Nissen Lease CUP renewals effectively render the Schenone Lease CUP void.

22 24. In July and October 2017, E&B submitted two applications to renew the GIG
23 Lease CUP and the Nissen Lease CUP. E&B submitted the CUP applications merely to renew
24 the CUPS to permit the existing, ongoing operations to continue unchanged. E&B did not
25 propose any changes to the operations.

26 25. E&B timely submitted its applications to allow for Defendants’ anticipated
27 renewals prior to the subject CUPS respective expirations. E&B has been in full cooperation with
28 the County during the entirety of the application renewal process.

1 **B. BZA’s Unanimous Approval of the CUP Renewals**

2 26. On February 22, 2018, the BZA held an initial public hearing to consider jointly
3 the two CUP renewal applications for the Livermore Oil Field. The BZA heard public comment
4 and deliberated during the meeting, and ultimately decided to continue consideration of the CUP
5 applications in order for staff to obtain information from the Alameda County Environmental
6 Health Department (“Environmental Health Department”) concerning the site. In addition, the
7 BZA continued consideration of the CUP applications to provide time for the BZA to thoroughly
8 review the reports, recommendations and testimony concerning the Livermore Oil Field that was
9 presented to the BZA at, and immediately prior to, the February 22 hearing.

10 27. On May 24, 2018, the BZA held a second public hearing, and again heard public
11 comment on the CUP applications. At that meeting, the BZA recommended conditional approval
12 of and took all of the following actions on the two CUP applications, having considered all
13 reports, recommendations, and testimony:

- 14 a. Adopted Resolution No. Z-18-13, as to CUP PLN2017-00110;
- 15 b. Adopted Resolution No. Z-18-14, as to CUP PLN2017-00181;
- 16 c. Adopted County staff’s determination regarding CEQA exemption
17 findings, finding that the Livermore Oil Field is a Class 1 Categorical Exemption (Existing
18 Facilities) under CEQA Guidelines section 15301; and
- 19 d. Conditionally approved the CUPS for the Livermore Oil Field.

20 28. Further, at the May 24, 2018 hearing, the BZA made the following findings as to
21 the CUP renewals for the Livermore Oil Field:

- 22 a. This use is required by the public need, as the applicant proposes to
23 continue development of a valuable natural resource;
- 24 b. The use will be properly related to other land uses and transportation and
25 service facilities, as the site is located near other similar facilities, and the use remains compatible
26 with surrounding agricultural uses. Urban uses are located sufficiently distant from the subject
27 Livermore Oil Field to ensure that these uses do not encroach visually or otherwise upon the
28 subject Livermore Oil Field for the duration of the permit;

1 c. As conditioned herein, the use should not cause detriment to the
2 surrounding properties or the general public; and

3 d. The use is consistent with the East County Area Plan and the Zoning
4 Ordinance, and will continue to meet the requirements of the County and DOGGR.

5 **C. Livermore Eco Watchdogs and the Center for Biological Diversity’s Appeal**
6 **of the CUP Renewals**

7 29. On June 1, 2018, CBD filed an appeal of the BZA’s conditional approval of the
8 Livermore Oil Field CUPS to the Board, requesting that the Board reverse the BZA’s decision
9 and deny the CUPS. Prior to the renewal applications for the two CUPS at issue in this action,
10 CBD had never previously raised a challenge against permits for any operations at the Livermore
11 Oil Field, despite the continuous operations that have occurred at the Livermore Oil Field since
12 1966.

13 30. In its appeal, CBD asserted various allegations, including E&B’s alleged history of
14 environmental violations at the Livermore Oil Field.

15 31. Additionally, CBD urged the Board to deny the CUP renewals on the basis that
16 “fossil fuel extraction must dramatically decrease in order to have a chance of avoiding the worst
17 effects of climate change. That means keeping oil in the ground.” CBD Appeal, In the Matter of
18 Center for Biological Diversity’s Appeal of Alameda East County Board of Zoning Adjustments
19 Approval of Conditional Use Permits PLN2017-00110 and PLN2017-00181, at 8 (June 1, 2018).
20 CBD blatantly requested that the Board disregard its statutory obligations and consider CBD’s
21 unsupported assertions as to alleged environmental impacts relating to global warming,
22 groundwater contamination and so forth, notwithstanding the fact that there was no evidence
23 presented linking the operations at the Livermore Oil Field to any of CBD’s generic concerns in
24 the nearly 52 years of operation of the Livermore Oil Field. The Environmental Health
25 Department concurred that there are no ongoing concerns at the Livermore Oil Field.

26 32. E&B timely and comprehensively responded to each of CBD’s allegations with
27 technical and scientific evidence, through letters submitted to the County prior to the Board’s
28 hearing on the appeal, as well as expert witness testimony at the appeal.

1 **D. Board’s Denial of the CUP Renewals and Approval of CBD’s Appeal**

2 33. On July 13 and July 18, 2018, the County Planning Department issued two staff
3 reports – one for each CUP application – analyzing the operations at the Livermore Oil Field and
4 recommending that the Board deny the appeal filed by CBD and vote to approve both CUPS for
5 continued operation of an oil operation at Livermore Oil Field, with conditions. The staff report
6 explained that the CUPS should be approved because, among other reasons, there would be no
7 changes to the number or location of the existing oil wells and related equipment.

8 34. On July 24, 2018, the Board heard the appeal by CBD and considered the BZA’s
9 approval of the two CUP applications for the Livermore Oil Field. After extensive public
10 comment and very little Board deliberation, the Board voted to approve the appeal and deny the
11 two CUP applications, overturning the decision of the BZA and voting against the Livermore Oil
12 Field. Four Supervisors voted to approve the appeal and deny the CUPS, and one Supervisor
13 abstained from voting on the CUPS.

14 35. In making its decision, the Board blatantly acknowledged that the decision was not
15 based purely on the evidence in the record, and the decision did not reflect the legal standards
16 required for review of CUP appeals. The Supervisors’ statements recognized that their decision
17 was legally tenuous and that a lawsuit would ensue following their decision. For example, in
18 voting to deny the CUP renewals, one Supervisor stated, “I know in my heart of hearts this is
19 going to wind up probably in court and I personally can make a prediction of where I think it will
20 go in court, so I can say this probably is not over.” The Supervisor acknowledged that he was
21 making a decision on behalf of the desires of his constituents that appeared at the hearing (i.e., the
22 proponents of the CBD appeal), not in accordance with the law. Similarly, another Supervisor
23 stated, “if the motion is made, I won’t oppose Supervisor Haggerty’s position. I’ll just abstain
24 because I think we’re going to end up in court.” On September 11, 2018, E&B received from the
25 County Planning Department the Defendants’ final, written decision granting the appeals of the
26 decisions of the BZA and denying the applications for CUP renewals for the Livermore Oil Field,
27 which were memorialized in Resolutions R-2018-266 and R-2018-267. The resolutions state the
28 following identical findings as the rationale for denial of both CUP renewals:

- 1 a. The use is not required by the public need: the small scale of the
2 applicant's oil production is not required by the public need, and it does not
3 justify the potential risk to the shallow groundwater aquifer near the site.
4 The public need is for clean, safe groundwater in this area.
- 5 b. The use will not be properly related to other land uses, transportation, and
6 service facilities in the vicinity: the site is located near open grazing and
7 dry farming lands, including a working ranch and a landscaping concern,
8 and the use is not compatible with these surrounding agricultural uses
9 given the potential risk of contamination to the shallow groundwater
10 aquifer near the site.
- 11 c. If allowed to continue, the use could cause serious detriment to the
12 surrounding properties or the general public. The use of waterflooding to
13 extract oil could increase the risk of contamination to the shallow
14 groundwater aquifer near the site.
- 15 d. The use is consistent with the East County Area Plan and the Zoning
16 Ordinance, and if granted with appropriate conditions would have
17 continued to meet the requirements of the County and the California State
18 Department of Conservation, Division of Oil, Gas and Geothermal
19 Resources.

20 36. The Board's findings are arbitrary and capricious. At the outset, these findings
21 were not specifically cited or entered into the record in their current form during the Board's July
22 24, 2018 meeting. Further, concerns that are raised by the Board are contradicted by established
23 facts, scientific evidence and actual experience, and the Board's findings are speculative at their
24 best when they are not flat-out false.

- 25 a. Regarding finding (a): This finding is in direct conflict with the BZA's finding
26 that the use is required by the public need, and is in direct conflict with all
27 previously issued CUPS for the Livermore Oil Field, which also determined that
28 the use is required by the public need. Regarding the alleged potential risk to the
groundwater: No evidence exists, and no evidence was presented in the record to
indicate that the safety of groundwater in the area was or will be jeopardized in
any way. Groundwater in the immediate area has been tested by E&B, with
County oversight, and E&B presented findings demonstrating that the groundwater
has no evidence of impact from the oil operations whatsoever over the decades of
continuous operations. Furthermore, E&B submitted evidence demonstrating that

1 oil produced at the Livermore Oil Field is the closest geographically and most
2 environmentally beneficial oil to send to the various refineries in the Bay Area.
3 Experts, including Dr. Steven Bohlen, former Supervisor of DOGGR, also
4 submitted evidence that was consistent with this position presented by E&B.
5 Therefore, in addition to reducing reliance on petroleum production from
6 international and out-of-state sources, this in-state production and use avoids
7 greenhouse gas emissions associated with international petroleum transportation.

8 b. Regarding finding (b): This finding is entirely inaccurate, and is an arbitrary,
9 unjustified finding by the Board. The Board attempts link to the local land use
10 compatibility of E&B operations to alleged groundwater contamination, and
11 asserts that such uses is incompatible with transportation and service facilities
12 without an explanation as to the alleged inconsistency. These illogical findings
13 attempt to conflate unrelated issues. This Property has been used for cattle and
14 horse grazing for the many decades that oil operations have been conducted at the
15 Property – more than 52 years – which demonstrates that the operations at the
16 Livermore Oil Field are compatible with other land uses, transportation, and
17 service facilities in the vicinity, including agricultural uses. The site is not “near”
18 open grazing land; the site includes open grazing land. Cattle and horse grazing
19 occurs daily, directly on the subject property. In fact, the grazing tenant and most
20 of the immediate neighbors submitted letters to the Board in support of the CUP
21 renewals. No immediate neighbor objected on these grounds, or the alleged
22 “landscaping” concern. Indeed, the only nearby neighbor with landscaping also
23 submitted a letter in support of the CUP applications. The Board ignored the
24 evidence it received that noted that not only in Livermore, but throughout
25 California—including in Kern, San Luis Obispo, Santa Barbara, Kings, Fresno,
26 and many other agricultural counties—oil and gas operations co-exist with
27 agriculture. Regarding the alleged potential risk of contamination to the shallow
28 groundwater aquifer near the site, E&B conducted substantial testing of the

1 groundwater at the Livermore Oil Field and, as explained in the testimony that the
2 Board received, in the nearly 52 years of operation, there has never been evidence
3 of any groundwater contamination whatsoever.

- 4 c. Regarding finding (c): This finding is also misplaced, and is an arbitrary,
5 unjustified finding by the Board. The Board has pointed to no existing evidence,
6 scientific or experiential, to validate this supposition. The Board's statement that
7 something "could" happen is an extremely general, non-specific projection without
8 any factual foundation. There has never been evidence of any groundwater
9 contamination. In fact, E&B and other experts presented evidence that E&B's
10 operations merely extract oil and water from the oil-bearing aquifer over one
11 thousand feet below the groundwater, and the water in the oil-bearing aquifer is
12 exempt from public consumption or use under the Safe Drinking Water Act. The
13 evidence presented to the Board showed that E&B's operations actually remove
14 the oil from the produced water and that the produced water that is re-injected into
15 the oil-bearing aquifer is actually cleaner than that which is brought to the surface.
16 The Alameda County Zone 7 Water Agency has not reported contamination from
17 oil operations in the vicinity of the Livermore Oil Field. Furthermore, in 2016, the
18 Board updated its existing Oil and Gas Ordinance No. 2016-38, which amended
19 Chapter 17.06 of the Alameda County Code ("County Code") and legislatively
20 approved the right of oil and gas operators to use waterflooding as a technique to
21 enhance oil production under certain circumstances within the County.. The Board
22 fails to establish how E&B's extraction process "could" cause serious local
23 detriment, nor has the Board presented any evidence that such operations have
24 caused any detriment in the approximately over 50 years of operations at the
25 Livermore Oil Field.
- 26 d. Regarding finding (d): E&B agrees with the Board's finding, which fully supports
27 renewal of the CUPS.
28

EXHAUSTION OF ADMINISTRATIVE REMEDIES

1
2 37. Plaintiffs and their agents have performed any and all conditions precedent to the
3 filing of this Petition and Complaint. Plaintiffs and their agents have raised each and every
4 significant substantive and procedural issue known, and participated in all phases of the
5 administrative review process. Plaintiffs and their agents appeared before the Board at the
6 July 24, 2018 hearing, and gave a public presentation in support of the approval of the CUPS.
7 Plaintiffs and their agents have thus fully exhausted Plaintiffs' administrative remedies.

8 38. The Board has taken final action with respect to the approvals challenged herein.
9 Plaintiffs have no further remedy to pursue at the administrative level to challenge the approvals
10 other than by means of this lawsuit. Plaintiffs have no plain, speedy, or adequate remedy in the
11 ordinary course of law.

FIRST CLAIM FOR RELIEF**(Vested Rights/Equitable Estoppel)**

12
13
14 39. Plaintiffs hereby incorporate by reference, as if they are set fully herein,
15 Paragraphs 1 through 38, inclusive.

16 40. California courts have found that where an individual holds a combination of
17 vested rights and rights granted pursuant to a CUP, the vested rights and the rights under the CUP
18 become bound together. The rights granted under a CUP become part of the individual's vested
19 rights. *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1531 (1992).

20 41. E&B, as successor-in-interest to the original operator, McCulloch, has a vested
21 right to continue the operations at the Livermore Oil Field, which were established prior to the Oil
22 and Gas Ordinance and the 1967 Policy. E&B's rights under the CUPS are inextricably linked
23 with E&B's vested rights. Therefore, E&B has a vested right to continue the entirety of its
24 operations at the Livermore Oil Field. Since McCulloch began its operations at the Livermore
25 Oil Field, the Livermore Oil Field has been in continuous operation, with E&B acquiring a partial
26 interest in 2006, assuming full operations of the Livermore Oil Field in 2008, and operating the
27 Livermore Oil Field continuously until the present time.
28

1 42. Plaintiffs have informed Defendants of E&B's vested rights, but Defendants
2 dispute them. Plaintiffs therefore seek a declaration that E&B has a vested right to continue its
3 oil production activities at the Livermore Oil Field, from continuing its ongoing exploration
4 process through complete production of oil and gas, including any necessary injection of
5 produced water, and that Defendants are equitably estopped from asserting otherwise.

6 43. A judicial declaration is necessary to resolve whether E&B has a vested right to
7 produce oil at the Livermore Oil Field and to ascertain the effects of Defendants' action on
8 E&B's vested rights, as well as to adjudicate Plaintiffs' rights to attorneys' fees and costs to the
9 extent permitted by law. Cal. Civ. Proc. Code §§ 1021.5, 1036; Cal. Gov't Code § 800.

10 **SECOND CLAIM FOR RELIEF**

11 **(Writ of Administrative Mandamus (Cal. Civ. Proc. Code § 1094.5))**

12 44. Plaintiffs hereby incorporate by reference, as if they are set fully herein,
13 Paragraphs 1 through 43, inclusive.

14 45. In denying E&B's applications for CUPS, Defendants acted arbitrarily and
15 capriciously, proceeded without and in excess of its jurisdiction, and prejudicially abused its
16 discretion, in that Defendants failed to proceed in the manner required by law, and its decision is
17 not supported by legally adequate findings or findings supported by substantial evidence, in at
18 least the following respects:

19 a. Defendants failed to apply the correct legal standard of review in acting on
20 the applications for CUPS;

21 b. Defendants failed to apply the requirements stated in the County Code for
22 CUPS for oil and gas production in the County;

23 c. There is no basis in law or fact to support a finding or determination that
24 any unpermitted operations will occur on the Property;

25 d. There is no basis in law or fact to support the Defendants' findings that the
26 use is not required by the public need; that the use will not be properly related to other land uses,
27 transportation, and service facilities in the vicinity; or that there is a risk of groundwater
28 contamination or serious detriment to the surrounding properties or the general public; and

1 e. The denial of E&B's applications for CUPS denied all reasonable
 2 economic use of the Property, and resulted in a taking of Plaintiffs' Property, in violation of the
 3 Fifth and Fourteenth Amendments to the United States Constitution, and sections 1 and 7 of
 4 article 19 of the California Constitution.

5 46. Accordingly, Plaintiffs are entitled to an alternative and peremptory writ of
 6 mandate compelling Defendants to vacate and set aside the Board's July 24, 2018 decision to
 7 deny E&B's applications, directing Defendants to conduct further proceedings on the CUP
 8 applications consistent with the Court's decision, as well as to adjudicate Plaintiffs' rights to
 9 attorneys' fees and costs to the extent permitted by law. Cal. Civ. Proc. Code § 1021.5, § 1036;
 10 Cal. Gov't Code § 800.

11 **THIRD CLAIM FOR RELIEF**

12 **(Violation of Federally Protected Civil Rights (42 U.S.C. §§ 1983, *et seq.*))**

13 47. Plaintiffs hereby incorporate by reference, as if they are set fully herein,
 14 Paragraphs 1 through 46, inclusive.

15 48. Plaintiffs are informed and believe and thereon allege that at all times herein
 16 mentioned Defendants were acting under, or purporting to act under, the color of state law and
 17 were implementing their purported official policy and the County Code, and that Defendants
 18 themselves are the highest-level ultimate decision-makers whose conduct resulted in the
 19 constitutional violations alleged herein.

20 49. Defendants have deprived Plaintiffs of Property or of property interests, in
 21 violation of federal and state law. 42 U.S.C. § 1983 protects against municipal actions that
 22 violate a property owner's constitutional rights, including actions that violate a property owner's
 23 rights to due process, equal protection of laws, and just compensation for the taking of property,
 24 under the Fifth and Fourteenth Amendments to the United States Constitution.

25 50. Defendants have acted in an arbitrary, unjustified, and unlawful manner;
 26 deliberately flouted the law and substantially impaired important legal rights secured to Plaintiffs;
 27 effectively denied to Plaintiffs the rights guaranteed to it under the Constitution of the United
 28 States and under the laws of the United States, including but not limited to the Plaintiffs' rights to

1 due process and equal protection of the laws, and just compensation for the taking of Property in
2 violation of the Fifth and Fourteenth Amendments to the United States Constitution.

3 51. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
4 deprived of civil rights in violation of 42 U.S.C. §§ 1983, *et seq.*, and Plaintiffs have been
5 subjected to great and irreparable injury, which may be properly remedied by injunctive relief,
6 restraining and enjoining Defendants from acting in the manner as set forth above, and Plaintiffs
7 have sustained or will sustain damages as a result of Defendants' unlawful conduct, in an amount
8 according to proof.

9 52. Accordingly, Plaintiffs are entitled to relief, pursuant to 42 U.S.C. §§ 1983, *et seq.*,
10 as well as attorneys' fees and costs to the extent permitted by law. 42 U.S.C. § 1988.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Inverse Condemnation (U.S. Const. Amend. V; Cal. Const. art. I, § 19))**

13 53. Plaintiffs hereby incorporate by reference, as if they are set fully herein,
14 Paragraphs 1 through 52, inclusive.

15 54. Plaintiffs hold leasehold and fee rights in minerals at the Livermore Oil Field.

16 55. E&B has a vested right to pursue oil and gas operations at the Livermore Oil Field.

17 56. In denying E&B's applications, Defendants have violated the Fifth and Fourteenth
18 Amendments to the United States Constitution, and section 1 of article 19 of the California
19 Constitution, in that their actions have the effect of a regulatory and physical taking of Plaintiffs'
20 Property without just compensation.

21 57. Defendants' actions deprives Plaintiffs of substantially all reasonable and viable
22 economic use of the Property and defeats its reasonable investment-backed expectations
23 concerning the Property. Defendants' actions, including but not limited to the Board's disregard
24 of the BZA's previous decision to approve the CUP applications, and the factual and legal
25 determinations made in connection therewith, were arbitrary and capricious and not reasonably or
26 substantially related to any legitimate or recognized governmental interest. Further, Defendants'
27 actions were so unreasonable from a legal standpoint as to lead to the conclusion that they were
28 taken for no purpose other than to destroy the Livermore Oil Field and any reasonable or viable

1 economic use of the Property. Plaintiffs are informed and believe, and thereon allege, that it was
 2 Defendants' intent to effect an appropriation and taking of Plaintiffs' Property without just
 3 compensation, and no compensation has been paid.

4 58. As a direct and proximate result of the unconstitutional taking, Plaintiffs have
 5 suffered damages in an amount that will be established at trial, which amount is in excess of \$11
 6 million.

7 59. Plaintiffs have been required to retain legal counsel to pursue legal redress
 8 Defendants' wrongful conduct, and Plaintiffs are entitled to recovery of costs of suit, fees,
 9 expenses and attorneys' fees pursuant to Code of Civil Procedure section 1036 and section
 10 1021.5, as well as attorneys' fees and costs to the extent permitted by Government Code section
 11 800.

FIFTH CLAIM FOR RELIEF

(Regulatory Taking (U.S. Const. Amend. V; Cal. Const. art. I, § 19))

12
 13
 14 60. Plaintiffs hereby incorporate by reference, as if they are set fully herein,
 15 Paragraphs 1 through 59, inclusive.

16 61. In its actions as hereinabove set forth, Defendants have adopted and applied
 17 regulations, policies, and ordinances in such a manner as to effectively deprive Plaintiffs of
 18 economically viable use of the Property.

19 62. Under the existing zoning and general plan designations for the Property, it may
 20 lawfully be used only for the purposes and uses consistent with those established in the "A"
 21 Agricultural zone under the County Code. This zone explicitly permits oil and gas operations
 22 with a CUP. County Code § 17.06.040. E&B and its predecessors have been operating the oil
 23 field, subject to conditions under CUPS, since the 1960s. One of E&B's CUPS was renewed in
 24 2014 for the Schenone Lease. E&B applied for renewal of that CUP, subject to conditions, and
 25 the County approved the CUP renewal, consistent with the County's regulations. The two CUPS
 26 at issue for the Property subsequently expired in 2017 and 2018. In compliance with
 27 requirements of the County Code and the CUPS, E&B timely applied for renewal of the CUPS,
 28 just as E&B had applied for renewal of the CUP for the Schenone Lease.

1 63. As set forth above, E&B applied for renewal of the CUPS for the oil operations at
2 the Property; however, such renewal has been denied by the Board. The operations of the
3 Livermore Oil Field have not physically changed since the last CUPS were issued, E&B has
4 resolved any historic compliance issues, and E&B is currently in full compliance with all
5 purportedly applicable laws and regulations. The Board's denial is inconsistent with the County's
6 regulations.

7 64. As a direct and approximate result of Defendants' conduct hereinabove set forth,
8 E&B has suffered damages resulting from the inability to use or make economic use of the
9 Property and further including the permanent loss of value of the Property, resulting from the
10 regulatory taking of the Property by Defendants. The County claims that, without the CUPS,
11 E&B is not authorized to operate the Livermore Oil Field. The amount of Plaintiffs' damages is
12 currently unknown to Plaintiffs, but is in excess of the minimum jurisdictional amount for this
13 Court.

14 65. In imposing a complete ban on the use of Plaintiffs' Property, the character of
15 Defendants' action is akin to a physical taking of Plaintiffs' Property and provides Plaintiffs with
16 no countervailing benefits that would offset the costs such taking.

17 66. Plaintiffs allege that the combined damages for deprivation of property rights
18 resulting from Defendants' conduct is in an amount in excess of \$11 million, or such other
19 amount according to proof, as well as attorneys' fees and costs to the extent permitted by law.
20 Cal. Civ. Proc. Code §§ 1021.5, 1036; Cal. Gov't Code § 800.

21 **SIXTH CLAIM FOR RELIEF**

22 **(Declaratory Relief (28 U.S.C. § 2202))**

23 67. Plaintiffs hereby incorporate by reference, as if they are set fully herein,
24 Paragraphs 1 through 66, inclusive.

25 68. An actual controversy has arisen and currently exists between Plaintiffs and
26 Defendants with regard the respective rights, duties and obligations of the parties in and to the
27 Property described in this lawsuit, and with regard to Defendants' interpretation and application
28 of section 17.06.040 of the County Code, as applied by Defendants to E&B's application for CUP

1 renewals hereinabove described. Accordingly, declaratory relief is appropriate and necessary, in
2 the following respects:

- 3 a. The issuance of an alternative and peremptory writ of mandate per Code of Civil
4 Procedure section 1094.5, directing Defendants to (a) vacate and set aside the
5 Board's decision approving the appeal filed by CBD and denying issuance of the
6 CUPS, and (b) conduct further proceedings on the applications consistent with the
7 Court's decision.
- 8 b. The issuance of a judicial declaration that Plaintiffs have a vested right to continue
9 the existing oil operations at the Livermore Oil Field, regardless of whether
10 Defendants approve and renew the CUPS, at the current time or in future years.

11 69. Plaintiffs allege that the Defendants have disregarded the findings of the BZA, and
12 the Board's decision overturning the BZA's unanimous decision is not based on substantial
13 evidence in the record. Plaintiffs contend that the Board denied E&B's CUPS based purely on
14 the Board's opinion as to alleged potential impacts of the operations, in flagrant violation of the
15 legal requirements stated in County Code section 17.54.710. The Board's findings are arbitrary,
16 unlawful, and unsupported by evidence in the record.

17 70. The economic impact of Defendants' wrongful conduct is severe, as Plaintiffs will
18 be prohibited from operating and producing its mineral interests at the Livermore Oil Field.
19 Defendants' unlawful conduct interferes with Plaintiffs' reasonable investment-backed
20 expectations, as E&B and its predecessors-in-interest have conducted ongoing operations at the
21 Livermore Oil Field for decades, and E&B has invested over \$1 million at the Livermore Oil
22 Field, with the expectation of continuing operations.

23 71. A judicial declaration regarding the application and validity of the Board's denial
24 of the CUPS is necessary and appropriate to avoid the violation of state law that would occur if
25 the Board's action were to prohibit Plaintiffs from operating its mineral rights at the Livermore
26 Oil Field, as well as Plaintiffs' entitlement to attorneys' fees and costs to the extent permitted by
27 law. Cal. Civ. Proc. Code §§ 1021.5, 1036; Cal. Gov't Code § 800.

28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a judicial declaration that Plaintiffs have a vested right to continue the existing oil operations at the Livermore Oil Field, regardless of whether Defendants approve and renew the CUPS, and corresponding injunctive relief.

2. For a judicial declaration that Defendants' ultimate denial of the CUPS violated Defendants' constraints under local, state, and federal laws, and corresponding injunctive relief.

3. For the issuance of an alternative and peremptory writ, or other decree, directing Defendants to (a) vacate and set aside its July 24, 2018 decision to deny E&B's application for issuance of the CUPS, and (b) conduct further proceedings on the applications consistent with the Court's decision, and corresponding injunctive relief.

4. For a judicial declaration that Defendants' actions constitute an unconstitutional taking in violation of article I, section 19 of the California Constitution and the Fifth and Fourteenth Amendments of the U.S. Constitution, and corresponding injunctive relief.

5. For damages and just compensation for the taking of Plaintiffs' Property in an amount according to proof at trial, and corresponding injunctive relief.

6. For cost of suit and attorneys' fees as permitted by law, including but not limited to California Code of Civil Procedure section 1036 and 1021.5, California Government Code section 800 and 42 U.S.C. section 1988.

7. For any and all other relief the Court deems just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b) and Civil Local Rule 3-6, Plaintiffs hereby demand a jury trial.

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DATED: September 21, 2018

STOEL RIVES LLP

By: /s/Michael N. Mills
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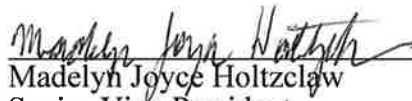
VERIFICATION

I, MADELYN JOYCE HOLTZCLAW, declare as follows:

I am a Senior Vice-President of E&B NATURAL RESOURCES MANAGEMENT CORPORATION, a California corporation, and I am authorized to make this Verification on its behalf. I have read the foregoing document entitled VERIFIED COMPLAINT AND PETITION and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

Executed this 21 day of September, 2018, at Bakersfield, California.



Madelyn Joyce Holtzclaw
Senior Vice-President
E&B Natural Resources Management Corporation