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6 Attorneys for Claimant,  
7 NACIMIENTO REGIONAL WATER  
8 MANAGEMENT ADVISORY COMMITTEE

11 NACIMIENTO REGIONAL WATER )  
12 MANAGEMENT ADVISORY )  
13 COMMITTEE, )

13 Claimant,

14 vs.

15 MONTEREY COUNTY WATER )  
16 RESOURCES AGENCY; BOARD OF )  
17 SUPERVISORS OF MONTEREY COUNTY )  
18 WATER RESOURCES AGENCY; BOARD )  
19 OF DIRECTORS OF MONTEREY COUNTY )  
20 WATER RESOURCES AGENCY; COUNTY )  
21 OF MONTEREY; BOARD OF )  
22 SUPERVISORS OF THE COUNTY OF )  
23 MONTEREY; and DOES 1 through 100, )  
24 inclusive, )

20 Defendants.

**CLAIM FOR DAMAGES**

1 NACIMIENTO REGIONAL WATER MANAGEMENT ADVISORY COMMITTEE, hereby  
2 presents this claim to the Monterey County Water Resources Agency, Board of Supervisors of  
3 Monterey County Water Resources Agency and Board of Directors of Monterey County Water  
4 Resources Agency pursuant to California Government Code § 910 and makes the following  
5 allegations:

6 1. The name of the claimant is Nacimiento Regional Water Management Advisory  
7 Committee (“NRWMAC”).

8 2. Claimant NRWMAC’s address is 9220 Carmel Rd., Atascadero, CA 93422.  
9 NRWMAC’s telephone number is (213) 744-0099.

10 3. All correspondence regarding this claim should be sent to Olivarez Madruga Lemieux  
11 O’Neill, LLP, 500 South Grand Avenue, 112th Floor, Los Angeles, CA 90071; (213) 744-0099.

#### 12 I. FACTS

13 Claimant is informed and believes and thereon alleges:

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

20 5. In 1954, the Monterey County Flood Control and Water Conservation District (the  
21 “District”), the predecessor in interest to defendant Monterey County Water Resources Agency (the  
22 “Agency”), filed Application 16124 for a water rights permit that would authorize construction and  
23 operation of the Nacimiento Reservoir. One of the express stated purposes of the project was that it  
24 was to be used for recreational purposes.

25 6. Lake Nacimiento was eventually completed in 1957 by the District and continues to be  
26 operated by the Agency. The California State Water Resources Control Board (“State Board”)  
27 subsequently inspected Lake Nacimiento, reviewed its operations, determined that the Agency had  
28 complied with its water rights permit, and issued a water rights license for Nacimiento Reservoir

1 (License 7543). Currently, Lake Nacimiento is operated with multi-purpose objectives including dam  
2 safety, flood protection, groundwater recharge, operation of the Salinas River Diversion Facility  
3 (“SRDF”), water supply, fish migration, fish habitat requirements, agriculture, and recreation.

4 7. As part of the initial construction of the Lake, the District used its eminent domain  
5 powers, as codified by the Monterey County Flood Control and Water Conservation District Act (the  
6 “Act”), to condemn and obtain private lands in and around the Lake. The Act specifically provided  
7 the District the authority and power to condemn private lands as public funds had previously been  
8 provided for the construction of a dam and reservoir by the District, including a reservoir available for  
9 fishing and recreational use.

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

23 9. Indeed, due to the statewide demand and appeal for recreation, Monterey County (the  
24 “County”) sought the financial assistance of the State of California (“State”), and in particular the  
25 State Department of Fish and Game. To entice the State into providing a grant to the County of \$1.5  
26 million, the County wrote a detailed grant application describing the commitment to develop a first-  
27 class recreation area at Lake Nacimiento. In that application, the County reaffirmed that recreation  
28 was one of the County’s highest priorities and made a long-term promise to promote and develop

1 recreational facilities at Lake Nacimiento. As a result, on or about June 15, 1958, the County and the  
2 State entered into an agreement whereby the Sate gave the County \$1.5 million in exchange for a  
3 promise to keep Lake Nacimiento and the surrounding environs open to the public.

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

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

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

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



1 represents 25% of the storage capacity of the Lake and, at that level, nearly all the launch ramps,  
2 docks and slips along the Lake are rendered unusable. A water level of 730 msl feet also creates  
3 substantial safety issues as at that level it renders certain areas of the Lake too narrow for boats to pass  
4 one another, as well as exposes previously submerged tree stumps, rocks and islands which pose  
5 hazards to boating. Claimant contends that under current conditions, and based on the high volume of  
6 visitor traffic on the Lake, a minimum water level of 748 msl feet is necessary to support recreational  
7 uses between Memorial Day and Labor Day each year, the peak recreational period for the Lake.

8         22. To that end, Claimant has fought to maintain a consistent and appropriate water level of  
9 748 msl feet. At this level, during most years, there is enough water to satisfy the needs of farmers in  
10 the Salinas Valley Basin, meet the flow requirements for fish habitation, and concurrently sustain  
11 recreation throughout the peak summer months – at least through Labor Day of each year.

12         23. Despite this, Defendants unwaveringly refuse to meet their obligations as consistently  
13 affirmed and reaffirmed throughout the history of the Lake. Defendants’ continuing violations of their  
14 permits and refusal to provide a sufficient water level for recreational purposes is violative of  
15 Claimant’s water rights, as well as the rights of the public to use the Lake for recreation.

16         24. Additionally, on information and belief and thereon alleged, Defendants’ actions have  
17 also negatively affected water quality on the Lake to the detriment of Plaintiff and its constituents  
18 inasmuch as Defendants’ water releases have caused conditions that make the water on the Lake  
19 unsafe for drinking. Given that many of Plaintiff’s constituents use the Lake as their sole source of  
20 domestic water, Plaintiff and its constituents have additionally been harmed by Defendants’ refusal to  
21 maintain sufficient water levels on the Lake.

22         25. As a result of Defendants’ actions alleged herein, Claimant claims compensatory  
23 damages for Defendants’ violation of the SWRCB water right release limitation, degrading of the  
24 water quality of the Lake that Plaintiff’s constituents use as their water supply, breach of contract of  
25 the easements granted by private parties for construction of the Lake with the express consideration  
26 that such easements would be used to facilitate recreation on the Lake, breach of contract as  
27 third-party beneficiaries of the express agreements entered into with SLO County granting Defendants  
28

1 the authority to condemn lands in SLO County, and breach of contract as third-party beneficiaries with  
2 the California Department of Fish and Game.

3 26. Claimant also seeks injunctive relief to prevent Defendants from continuing to violate  
4 Claimant's water rights and failing to abide by the express purposes given (i.e., recreational uses) for  
5 the condemnation of private lands in and around the Lake, and in violation of the contracts described  
6 herein and the easements granted to Defendants for the flooding of private lands with the express  
7 consideration that such flooding also provide for recreational uses.

8 27. Claimant claims damages in an amount not less than \$120 million as a result of the lost  
9 value of real property due to Defendants' violation of Claimant's water rights, degrading of the quality  
10 of the water of the Lake and failure to maintain an acceptable Lake level for recreational purposes.

11 28. Claimant also seeks attorneys' fees and costs for the violations described herein.  
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13 Dated: January 17, 2019

**OLIVAREZ MADRUGA LEMIEUX O'NEILL, LLP**

14  
15 By: 

Edward B. Kang

16 Attorneys for Claimant, NACIMIENTO REGIONAL  
17 WATER MANAGEMENT ADVISORY COMMITTEE  
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