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MICHAEL E. WALL (Bar No. 170238)  
Natural Resources Defense Council  
111 Sutter Street, 20th Floor  
San Francisco, CA 94104  
Tel.: (415) 875-6100  
Fax: (415) 875-6161  
Email: mwall@nrdc.org

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 14 2012

Attorney for Petitioners NATURAL  
RESOURCES DEFENSE COUNCIL,  
INC. and ENVIRONMENTAL  
WORKING GROUP

CLERK OF THE SUPERIOR COURT  
By Angela Yamsuan

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.; and ENVIRONMENTAL  
WORKING GROUP,  
  
Petitioners,  
  
v.  
  
CALIFORNIA DEPARTMENT OF PUBLIC  
HEALTH; and RON CHAPMAN, Director of  
the California Department of Public Health and  
State Public Health Officer, in his official  
capacity,  
  
Respondents.

RG12643520

Case No.:

VERIFIED PETITION FOR WRIT OF  
MANDATE (CCP § 1085)

1 Petitioners Natural Resources Defense Council, Inc. and Environmental Working  
2 Group allege as follows:

3 **INTRODUCTION**

4 1. This Petition challenges the California Department of Public Health’s  
5 (DPH’s or “the Department’s”) long-delayed and unlawful failure to protect Californians  
6 from hexavalent chromium. Made famous by the 2000 film *Erin Brockovich*, hexavalent  
7 chromium is a known carcinogen and widespread drinking water contaminant. At least  
8 one-third of drinking water sources sampled statewide—sources that provide drinking  
9 water to tens of millions of Californians—are contaminated with hexavalent chromium at  
10 concentrations higher than those that the state deems to pose no significant public health  
11 risk.

12 2. To address this contamination, the California Legislature directed the  
13 Department to finalize a primary drinking water standard for hexavalent chromium by  
14 January 2004. Cal. Health & Safety Code § 116365.5. The Department has not done so.  
15 More than a decade after the Legislature ordered the Department to act, and more than  
16 eight years after the statutory deadline for action passed, the Department has not even  
17 proposed a hexavalent chromium drinking water standard. The Department presently  
18 estimates on its website that it will not publish a final drinking water standard for  
19 hexavalent chromium for at least another two to three years.

20 3. In light of the urgent public health threat and the Department’s continuing  
21 failure to comply with the statutory deadline, Natural Resources Defense Council and  
22 Environmental Working Group respectfully petition for a writ of mandate to compel the  
23 Department to promulgate an enforceable hexavalent chromium drinking water standard  
24 without further delay.

1 **PARTIES**

2 **Natural Resources Defense Council**

3 4. Petitioner Natural Resources Defense Council, Inc. (NRDC) is a national,  
4 nonprofit membership corporation that was founded in 1970. NRDC maintains offices in  
5 Santa Monica and San Francisco, California, as well as in other states and abroad, and has  
6 more than 65,000 members who live in California. NRDC’s purposes include the  
7 preservation, protection, and defense of the environment, public health, and natural  
8 resources. Consistent with this mission, NRDC has championed drinking water quality  
9 issues, including the safety of California’s drinking water supplies. Through public  
10 comments and other advocacy, NRDC has repeatedly urged the state to set protective  
11 standards for hexavalent chromium in drinking water. NRDC brings this action on its own  
12 behalf, on behalf of its members, and on behalf of the people of the State of California.

13 5. Members of NRDC live in California, drink public water, and have  
14 concerns about the danger posed by hexavalent chromium in drinking water. They are  
15 injured by an increased risk of health harm from unregulated levels of hexavalent  
16 chromium in their drinking water.

17 6. The California Office of Environmental Health Hazard Assessment  
18 (OEHHA or “the Office”) determined that a concentration of 0.02 parts per billion of  
19 hexavalent chromium in drinking water poses no significant risk to public health. Based  
20 on this assessment, the Office set the public health goal (PHG) for hexavalent chromium  
21 at 0.02 parts per billion. Concentrations of hexavalent chromium in drinking water far  
22 above the PHG have been detected in areas where members of NRDC reside, including  
23 the City of Los Angeles and Los Angeles County, San Jose, and Riverside.

1 7. Over 13,350 NRDC members reside in Los Angeles County, including  
2 over 3,600 members in the City of Los Angeles. Much of the drinking water in Los  
3 Angeles is polluted by hexavalent chromium. According to drinking water monitoring  
4 data provided on the Department’s website, over 6,500 samples of water from sources  
5 supplying drinking water to the City of Los Angeles or Los Angeles County taken since  
6 2000 were contaminated with levels of hexavalent chromium of at least one part per  
7 billion.<sup>1</sup>

8 8. The City of Los Angeles Department of Water and Power supplies drinking  
9 water to millions of Los Angeles residents, including those in East, Central, and West Los  
10 Angeles, and those in the San Fernando Valley and the Harbor areas. Over 700 samples of  
11 water from sources used by the Los Angeles Department of Water and Power to supply  
12 drinking water to Los Angeles residents were contaminated with levels of hexavalent  
13 chromium of at least one part per billion.<sup>2</sup>

14 9. A number of NRDC members live in the San Fernando Valley, including  
15 in the cities of Burbank and Glendale. The San Fernando Valley contains former industrial  
16 sites contaminated with hexavalent chromium, and that contaminant has seeped into the  
17 drinking water supply. According to data on the Department’s website, over 2,200  
18 samples of water from sources used by the City of Glendale Water Department to supply  
19 drinking water to Glendale residents were contaminated with levels of hexavalent  
20 chromium of at least one part per billion.<sup>3</sup> The data on the Department’s website shows  
21 that over 1,700 samples of water from sources used by the City of Burbank Water

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22 <sup>1</sup> See DPH, *Chromium-6 in Drinking Water Sources: Sampling Results*,  
23 <http://www.cdph.ca.gov/certlic/drinkingwater/Pages/Chromium6sampling.aspx> (last  
visited Aug. 9, 2012).

24 <sup>2</sup> See *id.*

24 <sup>3</sup> See *id.*

1 Department to supply drinking water to Burbank residents were contaminated with levels  
2 of hexavalent chromium of at least one part per billion.<sup>4</sup>

3 10. NRDC has over 1,150 members in San Jose and over 250 members in  
4 Riverside. In 2010, Petitioner Environmental Working Group (EWG) sampled tap water  
5 from thirty-five U.S. cities and found levels of hexavalent chromium in drinking water in  
6 many of those water supplies. Relevant here, EWG’s sampling detected hexavalent  
7 chromium in the water supplies of San Jose and Riverside in concentrations that exceeded  
8 one part per billion. These levels placed San Jose and Riverside in the top five hexavalent  
9 chromium-contaminated cities tested by EWG nationwide.<sup>5</sup>

10 11. Members of NRDC or their children who reside in California include some  
11 who are particularly vulnerable to exposure to hexavalent chromium. The Office has  
12 identified several subpopulations that are more vulnerable to hexavalent chromium than  
13 the general population. The Office determined that absorption of hexavalent chromium  
14 following ingestion is substantially reduced by acidic stomach juices that facilitate the  
15 conversion of hexavalent chromium to less harmful substances. The Office concluded that  
16 persons with “elevated pH in the stomach are likely to experience increased absorption of  
17 [hexavalent chromium].”<sup>6</sup> Infants exposed to hexavalent chromium are at greater lifetime  
18 risk of cancer because their stomach pH levels are generally higher than adults, and  
19 therefore their bodies absorb more of the hazardous chemical. People who consume  
20 medications that raise gastric pH, including users of over-the-counter antacids, also  
21 experience an increased risk of harm. In addition, people with liver disease or medical

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22 <sup>4</sup> *See id.*

23 <sup>5</sup> Rebecca Sutton, EWG, Chromium-6 in U.S. Tap Water 5 (2010), *available at*  
<http://www.ewg.org/chromium6-in-tap-water>.

24 <sup>6</sup> OEHHA, Hexavalent Chromium in Drinking Water: California Public Health Goal 78–  
79 (2011) [hereinafter Hexavalent Chromium PHG]; *see also id.* at 98.

1 conditions in which gastric acid production is dramatically decreased and gastric pH is  
2 elevated, are more sensitive to the toxic effects of hexavalent chromium. Some members  
3 of NRDC, or their children, belong to these vulnerable subpopulations.

4 12. Compelling the Department to set a primary drinking water standard for  
5 hexavalent chromium is of beneficial interest to NRDC members currently exposed to or  
6 at risk of exposure to hexavalent chromium because promulgation of the standard would  
7 require drinking water providers to supply water that meets that standard. It would also  
8 inform NRDC members about the concentration of hexavalent chromium in drinking  
9 water that the State would consider acceptable for consumption. In addition, it would  
10 trigger legal requirements to perform more comprehensive and routine monitoring of  
11 drinking water sources for hexavalent chromium, which would inform NRDC members  
12 about the presence of hexavalent chromium in their tap water.

13 **Environmental Working Group**

14 13. Petitioner Environmental Working Group is a nonprofit public health and  
15 environmental research and advocacy organization with offices in Oakland and  
16 Sacramento, California, as well as Washington, D.C. and Ames, Iowa. EWG focuses  
17 much of its scientific research on potential health risks from chemical contamination of  
18 water, food, consumer products, and the environment. EWG leverages its expertise in  
19 water quality and water contaminants to inform the development of policy to provide safer  
20 drinking water to all Americans. To this end, EWG has invested considerable time, effort,  
21 and resources advocating for an enforceable hexavalent chromium drinking water  
22 standard, including submitting public comments on state administrative rulemakings  
23 related to hexavalent chromium on multiple occasions. EWG brings this action on its own  
24 behalf and on behalf of the people of the State of California.

1 **Respondents**

2 14. Respondent California Department of Public Health is a state department  
3 within the California Health and Human Services Agency and was created under the laws  
4 and regulations of the State of California. Cal. Health & Safety Code § 131000. The  
5 Department is charged with regulating drinking water “to protect public health.” *Id.*  
6 § 116350(a). As a successor to the former Department of Health Services, the Department  
7 of Public Health assumed the responsibility to establish a primary drinking water standard  
8 for hexavalent chromium.

9 15. Respondent Ron Chapman is the Director of the California Department of  
10 Public Health and is the State Public Health Officer. He is sued in his official capacity. As  
11 Director of the Department, he has the legal duty to ensure that the Department complies  
12 with Health & Safety Code section 116365.5.

13 **JURISDICTION AND VENUE**

14 16. This Court has jurisdiction pursuant to section 10 of article VI of the  
15 California Constitution and pursuant to Civil Procedure Code section 1085.

16 17. Venue is proper pursuant to Civil Procedure Code section 401 because  
17 Petitioners assert claims against a department of the State of California and an officer of  
18 the state in his official capacity, and the California Attorney General has an office in  
19 Oakland. *See* Cal. Civ. Proc. Code § 401(1).

20 18. NRDC has standing as an association to bring this action on behalf of its  
21 members. Members of NRDC have a clear, present, and beneficial right to the  
22 establishment of an enforceable hexavalent chromium drinking water standard. The  
23 interest in regulating a carcinogenic drinking water contaminant that NRDC seeks to  
24 protect by this suit is germane to NRDC’s purpose to protect public health. Neither the

1 claim asserted nor the relief requested requires the participation of individual members of  
2 NRDC in the lawsuit.

3 19. Petitioners also have standing to bring this action on behalf of themselves  
4 (as organizations in California), their members (in the case of NRDC), and the people of  
5 the State of California, because they have an interest in the execution of the law and the  
6 enforcement of Respondents' public duty. The question of Respondents' compliance with  
7 the provision of state law that requires them to regulate the safety of public drinking water  
8 with respect to hexavalent chromium, a dangerous carcinogen, is of significant public  
9 interest in California, as hexavalent chromium contamination of drinking water is  
10 widespread. Petitioners seek to compel Respondents to perform the public duty mandated  
11 by Health & Safety Code section 116365.5. Respondents' failure to comply with section  
12 116365.5 harms the public by subjecting it to a continuing risk of harmful health effects  
13 from exposure to unregulated levels of hexavalent chromium. It also harms the public by  
14 denying it information about the concentration of hexavalent chromium in drinking water  
15 that the State would consider acceptable for consumption and about the presence of  
16 hexavalent chromium in drinking water supplies. Petitioners are entitled to mandamus  
17 relief that protects the public's interests by compelling Respondents to comply with the  
18 statutory requirement to establish an enforceable drinking water standard for hexavalent  
19 chromium.

## 20 **FACTUAL BACKGROUND**

### 21 **Hexavalent Chromium**

22 20. Hexavalent chromium, also called chromium-6, is a heavy metal that  
23 contaminates drinking water sources and soil and poses a hazard to human health.  
24



1           21.     Hexavalent chromium has long been known to cause cancer in humans via  
2 inhalation. It has been classified as a human carcinogen via inhalation by the California  
3 Office of Environmental Health Hazard Assessment, the International Agency for  
4 Research on Cancer, the National Toxicology Program, and the U.S. Environmental  
5 Protection Agency (U.S. EPA).

6           22.     In 2011, the Office found that “there is now sufficient evidence that  
7 hexavalent chromium is also carcinogenic by the oral route of exposure.”<sup>7</sup> Both the Office  
8 and the National Toxicology Program have linked hexavalent chromium to cancer via  
9 ingestion, and a draft toxicological review by the U.S. EPA classified it as “likely to be  
10 carcinogenic to humans” when consumed in drinking water.<sup>8</sup>

11          23.     Hexavalent chromium causes a host of other harms to humans. It is  
12 associated with liver toxicity (mild chronic inflammation, fatty changes), respiratory harm  
13 (nasal and lung irritation, altered pulmonary function), gastrointestinal illness (irritation,  
14 ulceration and nonneoplastic lesions of the stomach and small intestine), hematological  
15 injury (microcytic, hypochromic anemia), and reproductive toxicity (effects on male  
16 reproductive organs, including decreased sperm count and histopathological change to the  
17 epididymis).

18          24.     According to the Department, hexavalent chromium poses “[a] public  
19 health concern.”<sup>9</sup>

21 \_\_\_\_\_  
<sup>7</sup> Hexavalent Chromium PHG, *supra*, at 1.

22 <sup>8</sup> *Id.* at 1, 81–82, 102; National Toxicology Program, Report on Carcinogens 106 (12th  
23 ed. 2011); U.S. EPA, Toxicological Review of Hexavalent Chromium 199–200 (2010)  
(draft).

24 <sup>9</sup> Dave Mazzera, DPH, Hexavalent Chromium: California’s Regulatory Process 5,  
available at <http://collab.waterrf.org/Workshops/hexchrom/hexchrominfo/Workshop%20Summary%20and%20Presentations/DMazzera-CDPH%20Update.pdf>.

1           25.    Compounds containing hexavalent chromium are used in various  
2 manufacturing industries, including metal processing, tanneries, chromate production,  
3 stainless steel welding, and ferrochrome and chrome pigment production. Due to its use  
4 by industry, hexavalent chromium is commonly found at contaminated sites and has been  
5 documented at approximately two-thirds of current or former hazardous waste sites on the  
6 federal government's National Priorities List of contaminated sites (also known as  
7 Superfund sites).

8           26.    Hexavalent chromium enters the drinking water supply through surface  
9 water runoff from industrial operations and soil leachate conveyed into groundwater.<sup>10</sup>

10           27.    People may be exposed to hexavalent chromium by drinking contaminated  
11 water, eating contaminated food, inhaling polluted air, and contacting contaminated  
12 soils.<sup>11</sup>

13           28.    Hexavalent chromium widely contaminates drinking water in California  
14 and across the nation. Testing showed that approximately one-third of sampled drinking  
15 water sources in California contained hexavalent chromium at levels above one part per  
16 billion as of February 2009.<sup>12</sup> These water sources supply drinking water to more than  
17 thirty-one million people, according to an analysis of the Department's drinking water  
18 monitoring data performed by EWG.<sup>13</sup> A hexavalent chromium concentration of one part  
19 per billion is fifty times the public health goal. Upon information and belief, many more  
20 drinking water sources in California contain hexavalent chromium at levels below one  
21 part per billion, but above the PHG for hexavalent chromium.

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22 <sup>10</sup> Hexavalent Chromium PHG, *supra*, at 5.

23 <sup>11</sup> *Id.* at 6; Agency for Toxic Substances and Disease Registry, Draft Toxicological  
Profile for Chromium, at 9 (2008).

24 <sup>12</sup> Hexavalent Chromium PHG, *supra*, at 3.

<sup>13</sup> Sutton, *supra*, at 5.

1 **California Safe Drinking Water Act**

2 29. The California Safe Drinking Water Act was passed “to ensure that the  
3 water delivered by public water systems of this state shall at all times be pure, wholesome,  
4 and potable.” Cal. Health & Safety Code § 116270(e). The Act gives the Department  
5 authority to promulgate primary drinking water standards for contaminants, which, once  
6 established, the Department may enforce against providers of public water.

7 30. There are generally two steps in the establishment of a primary drinking  
8 water standard. The Office generally must promulgate a public health goal. A PHG is an  
9 “estimate of the level of the contaminant in drinking water that is not anticipated to cause  
10 or contribute to adverse health effects, or that does not pose any significant risk to health.”  
11 *Id.* § 116365(c)(1). The Office bases the PHG “exclusively on public health  
12 considerations . . . .” *Id.* The PHG is not a legally enforceable standard.

13 31. In the other step, the Department generally uses the PHG to guide its  
14 adoption of a primary drinking water standard. A primary drinking water standard  
15 contains a maximum contaminant level (MCL) and monitoring and reporting  
16 requirements. *Id.* § 116275(c)(1), (3). The MCL sets forth the maximum permissible level  
17 of a contaminant in drinking water. *Id.* § 116275(c)(1), (f). The MCL, unlike a PHG, is  
18 enforceable against drinking water suppliers. The Department generally sets the MCL at a  
19 level that is as close as possible to the PHG for a given contaminant, “placing primary  
20 emphasis on the protection of public health.” *Id.* § 116365(a). An MCL for a carcinogen  
21 or a substance that may cause chronic disease must be set at a level that “avoids any  
22 significant risk to public health.” *Id.* § 116365(a)(2). When setting an MCL, the  
23 Department must also take into account the “technological and economic feasibility of  
24 compliance with the proposed primary drinking water standard.” *Id.* § 116365(b)(3). To

1 determine the economic feasibility of an MCL, the Department must “consider the costs  
2 of compliance to public water systems, customers, and other affected parties with the  
3 proposed primary drinking water standard, . . . using best available technology.” *Id.* The  
4 Department must review primary drinking water standards at least once every five years.  
5 *Id.* § 116365(g).

6 32. The State of California does not consider drinking water safe unless it  
7 complies with all MCLs.

8 33. Within six months following the effective date of the regulation  
9 establishing the MCL, public water systems generally must commence routine monitoring  
10 of drinking water for the contaminant. *See* Cal. Code Regs. tit. 22, § 64432(b)–(c).

#### 11 **Regulatory History of Hexavalent Chromium**

12 34. Although the State of California and the U.S. EPA have both established  
13 enforceable drinking water standards for total chromium in drinking water, neither has  
14 established an enforceable drinking water standard for hexavalent chromium specifically.

15 35. In October 2001, SB 351 (Ortiz) (codified at Health & Safety Code  
16 § 116365.5) was passed by the California Legislature and signed into law by the  
17 Governor. SB 351 became effective on January 1, 2002, and amended the California Safe  
18 Drinking Water Act to mandate that the Department establish a primary drinking water  
19 standard for hexavalent chromium by January 1, 2004. Thus, SB 351 required  
20 promulgation of a primary drinking water standard for hexavalent chromium within two  
21 years of its effective date, taking into account all intervening steps.

22 36. The duty imposed on the Department to issue a primary drinking water  
23 standard for hexavalent chromium by January 1, 2004 was mandatory. In a 2012 “Fact  
24 Sheet” posted on the Department’s website, the Department stated that it “is required by

1 California law to set an MCL for hexavalent chromium . . . .”<sup>14</sup> The Department also  
2 stated on its website that the law “requires [the Department] to adopt a chromium-6 MCL  
3 by January 1, 2004.”<sup>15</sup> The Department stated in a presentation that state law “required  
4 Department to adopt MCL by January 1,2004 [sic].”<sup>16</sup>

5 37. Section 116365.5 also required the Department to “report to the Legislature  
6 on its progress in developing a primary drinking standard for hexavalent chromium by  
7 January 1, 2003.”

8 38. The Office determined that a concentration of 0.02 parts per billion of  
9 hexavalent chromium in drinking water poses no significant risk to public health. Based  
10 on this assessment, the Office promulgated the PHG of 0.02 parts per billion of hexavalent  
11 chromium in drinking water in July 2011. The Office found that this concentration is  
12 “protective against all identified toxic effects from both oral and inhalation exposure to  
13 hexavalent chromium that may be present in drinking water.”<sup>17</sup>

#### 14 **Respondents’ Noncompliance and Delay**

15 39. More than eight years have passed since the statutory deadline for  
16 establishing the primary drinking water standard for hexavalent chromium. More than a  
17 year has passed since the Office issued the PHG for hexavalent chromium. The  
18 Department has not established a primary drinking water standard for hexavalent  
19 chromium.

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21 <sup>14</sup> DPH, Chromium-6 Fact Sheet (2012), *available at* [http://www.cdph.ca.gov/certlic/  
22 drinkingwater/Documents/Chromium6/Cr6FactSheet-03-30-2012.pdf](http://www.cdph.ca.gov/certlic/drinkingwater/Documents/Chromium6/Cr6FactSheet-03-30-2012.pdf).

23 <sup>15</sup> DPH, *Chromium-6: Timeline for Drinking Water Regulations*,  
<http://www.cdph.ca.gov/certlic/drinkingwater/Pages/Chromium6timeline.aspx> (last visited  
24 Aug. 9, 2012).

24 <sup>16</sup> Mazzer, *supra*, at 3, 5.

24 <sup>17</sup> Hexavalent Chromium PHG, *supra*, at 1.

1           40.     Before establishing a final primary drinking water standard, the  
2 Department must first publish a proposed standard, which is subject to a forty-five-day  
3 public comment period. At the time of filing, the Department had not published a  
4 proposed standard for hexavalent chromium.

5           41.     The Department’s failure to devote sufficient resources to develop the  
6 MCL for hexavalent chromium has contributed to the Department’s delay in issuing the  
7 primary drinking water standard for this chemical. Upon information and belief, the  
8 Department has allocated some resources that could have been allocated to the  
9 development of a hexavalent chromium MCL to other tasks which are discretionary. Upon  
10 information and belief, the Department has allocated some resources that could have been  
11 allocated to the development of a hexavalent chromium MCL to other tasks for which the  
12 Legislature has not established any statutory deadlines, or to tasks for which the statutory  
13 deadlines are later than January 1, 2004. The Department’s misallocation of resources has  
14 contributed to its delay in issuing a primary drinking water standard for hexavalent  
15 chromium.

16           42.     The Department could have undertaken some of the tasks needed to  
17 develop an MCL for hexavalent chromium while the Office was developing the PHG.  
18 Upon information and belief, the Department failed to undertake those tasks at the same  
19 time as the development of the PHG. The Department’s failure to undertake such tasks  
20 until after the development of the PHG has contributed to its delay in issuing a primary  
21 drinking water standard for hexavalent chromium.

22           43.     The Department states on its website that it will take approximately  
23 eighteen to twenty-four months from the date of the issuance of the PHG to publish a  
24 proposed primary drinking water standard, and that it “is working to have” a draft

1 standard published by July 2013.<sup>18</sup> The Department states on its website that finalizing the  
2 draft standard will take an additional twelve to twenty-four months.<sup>19</sup>

3 44. Pursuant to the Department’s public timetable, the Department would not  
4 publish a final primary drinking water standard for hexavalent chromium until July 2014  
5 or July 2015. Thus, according to the Department’s website, the Department intends to take  
6 at least three to four years after the issuance of the PHG to establish a primary drinking  
7 water standard for hexavalent chromium. In enacting Health & Safety Code section  
8 116365.5, the Legislature required that the primary drinking water standard for hexavalent  
9 chromium—and by implication, all preliminary tasks, including preparation of the PHG—  
10 must be completed within two years of that statute’s effective date.

11 45. The Department’s public timetable is premised on the assumption that “the  
12 process moves along without any major delays.”<sup>20</sup> Thus, the Department has  
13 acknowledged that it may take longer than its public forecasts to complete the process of  
14 finalizing a primary drinking water standard for hexavalent chromium. Even if the  
15 Department meets the estimated completion dates it provided on its website, the drinking  
16 water standard would arrive more than a decade after the deadline set by the Legislature.  
17 The Department’s continued failure to devote sufficient resources to develop the MCL for  
18 hexavalent chromium contributes to the Department’s delay in issuing a standard. The  
19 Department is capable of finalizing, and legally required to finalize, a primary drinking  
20 water standard for hexavalent chromium more quickly than its present public estimates.

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22 <sup>18</sup> See DPH, *Chromium-6 in Drinking Water: MCL Update* (last updated July 9, 2012),  
23 <http://www.cdph.ca.gov/certlic/drinkingwater/Pages/Chromium6.aspx>; DPH, *Chromium-6*  
24 *Fact Sheet*, *supra*, at 3.

<sup>19</sup> See *id.*

<sup>20</sup> DPH, *Chromium-6 in Drinking Water: MCL Update*, *supra*.

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**FIRST CAUSE OF ACTION**

**BY PETITIONERS AGAINST ALL RESPONDENTS**

**(Petition for Writ of Mandate)**

46. Petitioners incorporate by reference the allegations in the foregoing paragraphs.

47. Health & Safety Code section 116365.5 imposes on Respondents a clear, present, and ministerial duty to establish a primary drinking water standard for hexavalent chromium by January 1, 2004.

48. Respondents are able to establish a primary drinking water standard for hexavalent chromium, but have failed to do so, in derogation of Health & Safety Code section 116365.5. Respondents lack the legal discretion to refuse to perform this ministerial duty by the statutory deadline.

49. The timeline publicly provided by Respondents for establishing a primary drinking water standard for hexavalent chromium, if followed, would further and unreasonably delay the performance of this duty, and result in the continued violation of Health & Safety Code section 116365.5.

50. Respondents' failure to finalize a primary drinking water standard for hexavalent chromium more than eight years after the statutory deadline to do so has passed is unreasonable and unjustified.

51. Petitioners have a clear, present, and beneficial right to the establishment of an enforceable hexavalent chromium primary drinking water standard.

52. Petitioners have no plain, speedy, and adequate remedy at law to compel Respondents to comply with their legal obligations. Money damages are not presently



1 available from Respondents for the legal violations alleged in this Petition and would not  
2 in any event redress the harms to NRDC's members and the public.

3 53. There are no administrative remedies available to Petitioners to obtain the  
4 requested relief.

5 54. No record of a proceeding pursuant to Civil Procedure Code section 1089.5  
6 is required or requested.

7 **PRAYER FOR RELIEF**

8 Petitioners pray that this Court:

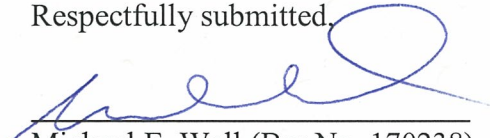
9 1. Issue a peremptory writ of mandate under seal of this Court commanding  
10 Respondents to establish a primary drinking water standard for hexavalent chromium on a  
11 date set by the Court that will ensure speedy performance of the statutory duty.

12 2. Award Petitioners reasonable attorneys' fees pursuant to Code of Civil  
13 Procedure section 1021.5 and any other applicable law.

14 3. Award Petitioners their costs of suit pursuant to Code of Civil Procedure  
15 sections 1032 and 1033.5 and any other applicable law.

16 4. Grant such other relief as may be just and proper.

17 Respectfully submitted,

18   
19 Michael E. Wall (Bar No. 170238)  
20 Natural Resources Defense Council  
21 111 Sutter Street, 20th Floor  
22 San Francisco, CA 94104  
23 Tel.: (415) 875-6100  
24 Fax: (415) 875-6161  
25 Email: mwall@nrdc.org


26 Attorney for Petitioners

1 **VERIFICATION**

2 I, Renée Sharp, say:

3 I am a Senior Scientist and the Director of the California Office of Petitioner  
4 Environmental Working Group and am authorized to make this verification on its behalf. I  
5 have read the foregoing petition and know its contents. Other than those facts alleged on  
6 information and belief, the facts alleged in the above petition are within my own  
7 knowledge, and I know them to be true. With respect to those facts alleged on information  
8 and belief, I believe those facts to be true.

9  
10 I declare under penalty of perjury under the laws of the State of California that the  
11 above is true and correct. This declaration is executed on August 10, 2012, in  
12 Oakland, California.

13   
14 Renée Sharp