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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF MERCED**

17 ANIMAL LEGAL DEFENSE FUND,
18
19 Plaintiff,
20 vs.
21 FOSTER POULTRY FARMS, a California
corporation,
22
23 Defendant.
24
25 THE CITY OF LIVINGSTON, a California city,
26
27 Real Party in Interest.
28

Case No.: 20CV-02493
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF (Cal. Const. Art. X, § 2;
Code of Civ. Proc. § 1060)

1 **I. INTRODUCTION**

2 1. Defendant Foster Poultry Farms (Foster Farms) operates a chicken slaughterhouse in
3 Livingston, California. The slaughterhouse consumes three to four million gallons of drinkable
4 water each day—more than all other water users in the City of Livingston combined—to slaughter
5 and process chickens to sell for meat.
6

7 2. The millions of gallons of water that Foster Farms consumes each day is sourced
8 from the critically overdrafted Merced Subbasin. Foster Farms procures the water from the City of
9 Livingston, Real Party in Interest, which extracts it as groundwater.

10 3. Upon information and belief, Foster Farms uses a “live-hang” slaughter system that
11 involves a process known as “electric immobilization” to paralyze chickens before slaughter.
12

13 4. Alternative processes such as “controlled atmosphere killing” and “controlled
14 atmosphere stunning” are feasible, available, and require significantly less water. Due to this and
15 other water management practices, Foster Farms returns an unnecessarily lower quantity of
16 groundwater to the Subbasin than it consumes, and at a degraded quality.

17 5. Plaintiff Animal Legal Defense Fund (ALDF) seeks a declaratory judgment under
18 California Code of Civil Procedure section 1060 declaring that Foster Farms’ use of millions of
19 gallons of groundwater from the critically overdrafted Merced Subbasin is unreasonable in violation
20 of article X, section 2 of the California Constitution, and that it prevents water of the State from
21 being put to its maximum beneficial use.
22

23 6. ALDF seeks an order enjoining Foster Farms from these unconstitutional uses of
24 water.

25 7. In a good faith attempt to resolve this matter without litigation, ALDF notified Foster
26 Farms on two separate occasions that its water use is unreasonable in violation of the California
27 Constitution. Attach. 1, Letter from Jason R. Flanders to Randall C. Boyce & Justin Kosta (Apr. 24,
28 2020); Attach. 2, Letter from Jason R. Flanders to Randall C. Boyce & Justin Kosta (Aug. 3, 2020).

1 **II. PARTIES**

2 8. ALDF is a national nonprofit, tax-exempt 501(c)(3) membership organization based
3 in California that works in the public interest, and on behalf of its members' interests, to protect the
4 lives and advance the interests of animals, including both farmed and wild animals, through the
5 legal system. ALDF achieves its mission by engaging in legal advocacy to ensure farmed and wild
6 animals are protected from corporate practices that unlawfully harm them and their natural
7 environments, and to likewise protect the interests of ALDF members who care about these species
8 and the environment and are directly impacted by practices that harm them. ALDF has more than
9 300,000 members and supporters, including individuals who live, work, and recreate in Merced
10 County, California, and whose access to water has been directly impacted by Foster Farms'
11 unreasonable use. The interests of ALDF and its members have been, are being, and will continue to
12 be harmed by Foster Farms' unreasonable, unconstitutional water use, and method of water use. The
13 relief sought will redress this harm by protecting the region's groundwater resources from further
14 waste and unreasonable use by Foster Farms, which directly benefits ALDF's members. If Foster
15 Farms is allowed to continue committing and profiting from its unreasonable and unconstitutional
16 exploitation of water resources, it will be at the continued expense of beneficial water users in the
17 region—including ALDF's members.

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20 9. Defendant Foster Farms is a California corporation based in Livingston, California.
21 It is in the business of slaughtering chickens and other birds to sell for meat. Foster Farms operates
22 a chicken slaughterhouse (and other processing facilities) located at 843 Davis Street in Livingston.
23 Foster Farms is Livingston's largest water customer, buying and consuming more than sixty percent
24 of the water that Livingston sells. Foster Farms is obligated to make only reasonable beneficial use
25 of water under article X, section 2 of the California Constitution.
26

27 10. Real Party in Interest the City of Livingston—a city of more than fourteen thousand
28 people in Merced County, California—lies in the San Joaquin Valley. Livingston is the main water

1 purveyor within the city limits. It extracts groundwater from the critically overdrafted Merced
2 Subbasin, treats it, and sells it to Foster Farms.

3 **III. JURISDICTION AND VENUE**

4 11. This Court has jurisdiction pursuant to California Code of Civil Procedure section
5 1060 and the California Constitution, article X, section 2 and article VI, section 10.

6 12. This Court has concurrent jurisdiction with the State Water Resources Control Board
7 to enforce article X, section 2, and exhaustion of administrative remedies is not a prerequisite to this
8 Court’s exercise of jurisdiction. *Envtl. Def. Fund, Inc. v. E. Bay Mun. Util. Dist.*, 26 Cal. 3d 183,
9 200 (1980).

10 13. Pursuant to Code of Civil Procedure section 1060, “[a]ny person . . . who desires a
11 declaration of his or her rights or duties with respect to another . . . may, in cases of actual
12 controversy relating to the legal rights and duties of the respective parties, bring an original action .
13 . . in the superior court . . .”

14 14. Venue is proper in this Court under California Code of Civil Procedure section 393
15 because the Foster Farms slaughterhouse at issue is in Merced County, California, and because the
16 cause of action alleged arises out of Foster Farms’ misconduct in Merced County.

17 **IV. LEGAL BACKGROUND**

18 15. For nearly a century, article X, section 2 of the California Constitution has mandated
19 that “water use must be reasonable and for a beneficial purpose.” *United States v. State Water Res.*
20 *Control Bd.*, 182 Cal. App. 3d 82, 105 (Ct. App. 1986) (citing Cal. Const., art. X, § 2). It stands as
21 “the cardinal principle of California water law.” *Id.*

22 16. Article X, section 2 of the California Constitution states:

23 It is hereby declared that because of the conditions prevailing in this
24 State *the general welfare requires that the water resources of the*
25 *State be put to beneficial use to the fullest extent of which they are*
26 *capable, and that the waste or unreasonable use or unreasonable*
27 *method of use of water be prevented*, and that the *conservation of*
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such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. . . . This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

Cal. Const., art. X, § 2 (emphasis added); *see* Cal. Water Code § 100.

17. Article X, section 2 of the California Constitution applies equally to surface waters and groundwater. *See Allegretti & Co. v. Cty. of Imperial*, 138 Cal. App. 4th 1261, 1279 (Ct. App. 2006) (citing *City of Barstow v. Mojave Water Agency*, 23 Cal. 4th 1224, 1240 (2000)).

18. Article X, section 2 of the California Constitution applies as a “universal limitation” on all water users. *State Water Res. Control Bd.*, 182 Cal. App. 3d at 105 (citing Cal. Const., art. X, § 2); *see Santa Barbara Channelkeeper v. City of San Buenaventura*, 19 Cal. App. 5th 1176, 1181 (Ct. App. 2018); *People ex rel. State Water Resources Control Bd. v. Forni*, 54 Cal. App. 3d 743, 754 (Ct. App. 1976).

19. The concepts of reasonable use and maximum beneficial use are dynamic, evolving to account for changing conditions and circumstances over time. *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.*, 3 Cal. 2d 489, 567 (1935). In this time and area “of great scarcity and great need,” water law in California has evolved from “a concept of absolute right of use to one of comparative advantage of use.” *Imperial Irrigation Dist. v. State Wat. Res. Control Bd.*, 225 Cal. App. 3d 548, 570–71 (Ct. App. 1990), *reh’g denied and opinion modified* (Dec. 12, 1990).

20. Reasonable use and maximum beneficial use are two separate constitutional requirements, “both of which must be met.” *Santa Barbara Channelkeeper*, 228 Cal. App. 3d at 590 (citing *Joslin v. Marin Mun. Water Dist.*, 67 Cal. 2d 132, 143 (1967)).

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A. Reasonable Use

21. Courts consider the totality of the circumstances to determine whether a water use is reasonable. *See, e.g., Abatti v. Imperial Irrigation Dist.*, No. D072850, 2020 WL 4013439, at *8 (Cal. Ct. App. July 16, 2020) (“Reasonable use is ‘dependent upon not only the entire circumstances presented but varies as the current situation changes.’” (quoting *Envtl. Def. Fund, Inc.*, 26 Cal. 3d at 194)); *Santa Barbara Channelkeeper*, 19 Cal. App. 5th at 1185; *Tulare*, 3 Cal. 2d at 567.

22. Factors for consideration often include, but are not limited to:

- a. “[T]he ever increasing need for the conservation of water in this state,” which is a “[p]aramount . . . statewide consideration[] of transcendent importance.” *Joslin*, 67 Cal. 2d at 140.
- b. The state of existing water resources in the area. *Tulare*, 3 Cal. 2d at 567.
- c. Conformity of the water use with local custom. *Santa Barbara Channelkeeper*, 19 Cal. App. 5th at 1185.
- d. Secondary impacts of the water use, including impacts to water quality. *United States v. State Water Res. Control Bd.*, 182 Cal. App. 3d 82 (Ct. App. 1986).
- e. The availability of less water-intensive alternatives. *Forni*, 54 Cal. App. 3d at 750–51.

23. The California Supreme Court has also held—“essentially as self-evident”—that in some contexts there are per se unreasonable water uses. *Light v. State Water Res. Control Bd.*, 226 Cal. App. 4th 1463, 1480 (Ct. App. 2014), *as modified on denial of reh’g* (July 11, 2014). This includes using any “appreciable quantity of water” in a water-scarce area of the Central Valley solely to kill animals, without a primary beneficial use. *Tulare*, 3 Cal. 2d at 568 (“[I]n such an area of need . . . the use of an appreciable quantity of water [to kill gophers] cannot be held to be a reasonable beneficial use. This seems to us so self-evident that no further discussion of the point is necessary.”).

1 24. “[U]nder the California Constitution there ‘is no property right in an unreasonable
2 use’ of water.” *Santa Barbara Channelkeeper*, 19 Cal. App. 5th at 1181 (quoting *Joslin*, 67 Cal. 2d
3 at 145). Likewise, there is no property right in water purchased from a purveyor. *Abatti*, 2020 WL
4 4013439, at *10 (holding that those who purchase water from a water purveyor “possess an
5 equitable and beneficial interest” in the appropriative water rights held by the purveyor, but that this
6 interest is a right to service rather than a right to water).
7

8 **B. Maximum Beneficial Use**

9 25. Water must also be put to its maximum beneficial use. Cal. Const., art. X, § 2
10 (mandating “water resources of the State be put to beneficial use to the fullest extent of which they
11 are capable” and “conservation of such waters . . . be exercised with a view to the reasonable and
12 beneficial use thereof in the interest of the people and for the public welfare.”); Cal. Water Code
13 § 100 (echoing constitutional mandate that water must be put to its maximum beneficial use);
14 *Imperial Irrigation Dist.*, 225 Cal. App. 3d at 570–71 (“The Constitution requires not only that
15 water use be ‘reasonable’ but that ‘the water resources of the State be put to beneficial use to the
16 fullest extent of which they are capable.’” (quoting Cal. Const., art. X, § 2)).
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18 26. “Beneficial uses are ‘categories of water use.’” *Abatti*, 2020 WL 4013439, at *8
19 (quoting *Santa Barbara Channelkeeper*, 19 Cal. App. 5th at 1185). They include domestic,
20 municipal, agricultural, industrial supply, power generation, recreation, aesthetic enjoyment,
21 navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources or
22 preserves. Cal. Water Code § 13050(f); *see* California Regional Water Quality Control Board
23 Central Valley Region Fifth Edition at 2-4 (May 2018) (listing beneficial uses of groundwater,
24 including municipal and domestic water supply, agricultural supply, industrial service supply, and
25 industrial process supply).
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27 27. But “[a]ll beneficial uses are not created equal. The California Legislature has
28 declared that ‘water for domestic purposes is the highest use,’ and that agricultural use comes

1 second.” *Santa Barbara Channelkeeper*, 19 Cal. App. 5th at 1185 (citing Cal. Water Code § 106).
2 “The fact that a diversion of water may be for a purpose ‘beneficial’ in some respect (as for
3 desalinization of lakes or generation of electric power) does not make such use ‘reasonable’ when
4 compared with demands, or even future demands, for more important uses.” *Imperial Irrigation*
5 *Dist.*, 225 Cal. App. 3d at 570–71; *see* Cal. Water Code §§ 1460 (use of water for the municipality
6 or its residents for domestic purposes is the highest use).

8 **C. Enforcing Article X, Section 2**

9 28. Private parties, including public interest organizations, have standing to seek
10 enforcement of article X, section 2 of the California Constitution. *In re Water of Hallett Creek*
11 *Stream Sys.*, 44 Cal. 3d 448, 472 n.16 (1988) (citing *EDF v. E. Bay Mun. Util. Dist.*, 26 Cal. 3d 183,
12 200 (1980)).

13 29. It is well-established that courts have broad equitable authority—and an affirmative
14 duty—to promote compliance with article X, section 2 of the California Constitution by preventing
15 the unreasonable use of water and by maximizing its beneficial use. *See, e.g., City of Barstow*, 23
16 Cal. 4th at 1249–50; *City of Lodi v. E. Bay Mun. Util. Dist.*, 7 Cal. 2d 316, 341 (1936); *Peabody v.*
17 *City of Vallejo*, 2 Cal. 2d 351, 383–84 (1935); *Tulare*, 3 Cal. 2d at 574; *Water Replenishment Dist.*
18 *of S. California v. City of Cerritos*, 202 Cal. App. 4th 1063, 1070 (Ct. App. 2012), *as modified on*
19 *denial of reh’g* (Feb. 8, 2012); *California Am. Water v. City of Seaside*, 183 Cal. App. 4th 471, 480–
20 81 (Ct. App. 2010); *Hi-Desert Cty. Water Dist. v. Blue Skies Country Club, Inc.*, 23 Cal. App. 4th
21 1723, 1737 (Ct. App. 1994).

22 30. Application of article X, section 2 of the California Constitution may require water
23 users “to endure some inconvenience or to incur reasonable expenses.” *Forni*, 54 Cal. App. 3d at
24 751–52.
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1 31. Article X, section 2 of the California Constitution applies as a “universal limitation”
2 on all water users, whether public or private. *See State Water Res. Control Bd.*, 182 Cal. App. 3d at
3 105 (citing Cal. Const., art. X, § 2).

4 **V. FACTUAL BACKGROUND**

5 **A. The Critically-Overdrafted Merced Subbasin**

6 32. Foster Farms purchases water from Livingston, which is the main water purveyor
7 within the city limits. City of Livingston, 2015 Urban Water Mgmt. Plan 1, 2 (Aug. 2016).
8 Livingston relies exclusively on groundwater from the Merced Subbasin to supply its municipal
9 water system, including the water it sells to Foster Farms. *Id.* at 45, 47.

10 33. The Merced Subbasin lies on the eastern side of the San Joaquin Valley, within the
11 San Joaquin Valley Groundwater Basin. *Id.* at 45. The groundwater system is bounded by the
12 Merced River to the north, the San Joaquin River to the west, the Chowchilla River to the south, and
13 the Sierra Nevada foothills to the east. *Id.*

14 34. The California Department of Water Resources has classified the Merced Subbasin
15 as a critically overdrafted groundwater basin. Merced Subbasin Groundwater Sustainability Plan 1-
16 1 (Nov. 2019) (GSP).¹ “A basin is subject to critical overdraft when continuation of present water
17 management practices would probably result in significant adverse overdraft-related environmental,
18 social, or economic impacts.” *Critically Overdrafted Basins*, Cal. Dep’t of Water Res. (citations
19 omitted), [https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118/Critically-](https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118/Critically-Overdrafted-Basins)
20 [Overdrafted-Basins](https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118/Critically-Overdrafted-Basins) (last visited Sep. 1, 2020). Overdraft causes “seawater intrusion, land
21 subsidence, groundwater depletion, and/or chronic lowering of groundwater levels.” *Id.* The Merced
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26 ¹ The Merced Subbasin is subject to a Groundwater Sustainability Plan pursuant to the
27 Sustainable Groundwater Management Act. *See id.* The goal of the Groundwater Sustainability Plan
28 is to “[a]chieve sustainable groundwater management on a long-term average basis by increasing
recharge and/or reducing groundwater pumping, while avoiding undesirable results.” *Id.*

1 Subbasin “has been in overdraft for a long period of time,” GSP at ES-1, and groundwater pumping
2 is the primary cause of this overdraft, *id.* at ES-3. Historical, current, and projected conditions
3 indicate that the Merced Subbasin will continue to be overdrafted in the future. *Id.* at section 2.3.

4 35. As a result of its critical overdraft, the Merced Subbasin is contaminated by high
5 levels of salinity and other constituents. *Id.* at 3-12. The high levels of salinity are concentrated
6 along the west side of the Merced Subbasin—adjacent to the San Joaquin River and beneath
7 Livingston—and are caused by groundwater pumping, which causes the upwelling and migration of
8 high-salinity groundwater from a deep saline water body in regionally-deposited marine
9 sedimentary rocks beneath the San Joaquin Valley. *Id.* Such groundwater quality degradation can
10 “cause a reduction in usable supply to groundwater users, with domestic wells being most
11 vulnerable[,]” and can negatively impacts ecosystems, including native vegetation and wetlands. *Id.*
12

13 36. Another impact of critical overdraft is subsidence, which is occurring to varying
14 degrees across the subbasin region. Merced Groundwater Subbasin Groundwater Sustainability Plan
15 Annual Report Water Years 2016-2019 at 2-28 (Apr. 2020). Some areas in the subbasin region have
16 subsided as much as one and a half feet over the last four years. *Id.* at 2-29. Subsidence causes
17 many negative ecological and environmental effects, including the disturbance of surface water
18 courses and the permanent reduction of groundwater storage capacity.
19

20 37. Effects of climate change exacerbate conditions in the already drought-prone San
21 Joaquin Valley and will continue to contribute to the Merced Subbasin’s condition of overdraft.
22 City of Livingston, 2015 Urban Water Mgmt. Plan at 64. Though 2019 was a relatively wet year, a
23 recent study reveals that western states, including California and the Merced Subbasin region, are
24 descending into a historic “megadrought.” A. Park Williams et al., *Large contribution from*
25 *anthropogenic warming to an emerging North American megadrought*, *Science* (Apr. 17, 2020).
26 The megadrought is expected to be “worse than any experienced in recorded history.” Kevin Stark,
27 *Megadrought Conditions Not Seen for 400+ Years Have Returned to the West, Scientists Say*,
28

1 KQED (Apr. 16, 2020). The United States Drought Monitor already indicates that Merced County is
2 currently in a moderate drought. *California*, United States Drought Monitor,
3 <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CA> (last visited Sep. 1,
4 2020). State policy requires consideration, analysis, and preparation for drought, as well as for other
5 impacts of climate change. *See* GSP at 2-148.

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7 38. Residents who depend on water from the Merced Subbasin—including ALDF’s
8 members and supporters—are bearing the brunt of its critical overdraft. Many area municipalities
9 are rationing water. *See, e.g., Frequently Asked Questions: Water*, City of Merced,
10 <https://www.cityofmerced.org/departments/public-works/water/frequently-asked-questions-water>
11 (detailing water rationing for residents) (last visited Sep. 1, 2020). And many area wells are running
12 dry, necessitating expensive well upgrades. *See, e.g., Farmers Hijack Community Water Access*
13 *Despite Groundwater Act, Activists Say*, KCET (May 4, 2020), [https://www.kcet.org/shows/earth-](https://www.kcet.org/shows/earth-focus/farmers-hijack-community-water-access-despite-groundwater-act-activists-say)
14 [focus/farmers-hijack-community-water-access-despite-groundwater-act-activists-say](https://www.kcet.org/shows/earth-focus/farmers-hijack-community-water-access-despite-groundwater-act-activists-say) (describing
15 how thousands of wells have run dry and how thousands more are expected to follow).
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17 C. Foster Farms’ Unreasonable Water Use and Method of Use

18 39. Foster Farms uses three to four million gallons of drinkable water each day to
19 slaughter and process chickens to sell for meat. City of Livingston, 2015 Urban Water Mgmt. Plan
20 at 2; *see* Foster Farms CA Reg’l Water Quality Control Bd. Cent. Valley Reg., Order No. R5-2009-
21 0086, Waste Discharge Requirements for Foster Poultry Farms (2009).
22

23 40. Foster Farms is Livingston’s largest customer, accounting for approximately sixty-
24 five percent of Livingston’s total annual water sales revenue. Hansford Economic Consulting, City
25 of Livingston, Water, Wastewater, and Solid Waste Rate Study 3 (Nov. 14, 2019).
26

27 41. Livingston extracts groundwater from the Merced Subbasin through a series of wells
28 sited throughout the city. City of Livingston, 2015 Urban Water Mgmt. Plan at 2. The city uses

1 approximately three times more water than similarly situated users within the state. *California*
2 *Urban Water Use Data*, Pacific Inst. (June 2020), <http://www.pacinst.org/gpcd/table/>.

3 42. Two of Livingston's groundwater wells (Nos. 13 and 16) have exceeded the
4 Maximum Contaminant Level (MCL) established by the U.S. Environmental Protection Agency for
5 arsenic, while two additional wells (Nos. 15 and 17) have exceeded the MCL for manganese.
6 Moreover, every Livingston well has exceeded the State-designated MCL for 123 Trichloropropane.
7 City of Livingston, 2015 Urban Water Mgmt. Plan, Table 6-1. In August 2018, the California State
8 Water Resources Control Board issued a Compliance Order (No. 03-11-18R-018) to Livingston
9 based on exceedances of the Federal MCL for arsenic observed at an additional well (No. 15).

10
11 43. Foster Farms has been held responsible for the historical contamination of
12 Livingston's groundwater resources. Prior to 2009, Foster Farms relied on Livingston's Industrial
13 Wastewater Treatment Facility (Treatment Facility), which exclusively serviced Foster Farms.
14 Foster Farms CA Reg'l Water Quality Control Bd. Cent. Valley Reg., Order No. R5-2009-0086,
15 Waste Discharge Requirements for Foster Poultry Farms 1 (2009). The Treatment Facility was
16 located by Foster Farms along the northern boundary of the Merced Subbasin, near the banks of the
17 Merced River. *Id.* The Treatment Facility consisted of twelve unlined ponds across eighty-three
18 acres. *Id.*

19
20 44. In October 2006, the California Regional Water Quality Control Board for the
21 Central Valley Region adopted Cease and Desist Order No. R5-2006-0112 (Order) against
22 Livingston, which addressed groundwater pollution and a slew of other problems flowing from
23 Livingston's Treatment Facility discharges. *Id.* The Order required the construction of upgraded
24 wastewater treatment facilities and other measures, spurring litigation between Livingston and
25 Foster Farms over the cost of compliance. *Id.* In November 2007, Livingston and Foster Farms
26 entered into a settlement agreement providing that Foster Farms would construct a new wastewater
27 treatment facility on its own land and stop using Livingston's Treatment Facility. *Id.* Following a
28

1 subsequent Order in 2012, Foster Farms and Livingston were also required to remediate
2 Livingston's Treatment Facility to address the impacts of Foster Farms' previous discharges. *Id.*

3 45. Foster Farms constructed the wastewater treatment plant required by the settlement
4 on six acres of its own land and submitted the required Report of Waste Discharge in January 2008.

5 *Id.* at 2. The California Regional Water Quality Control Board for the Central Valley Region
6 subsequently issued Waste Discharge Requirements (Permit) for the wastewater treatment plant.

7 *See id.*

8
9 46. Before Foster Farms' wastewater enters its wastewater treatment plant, it is
10 pretreated to remove suspended solids. *Id.* The wastewater then enters the plant for treatment to
11 reduce 5-day biochemical oxygen demand (BOD₅) and nitrogen concentrations in the wastewater.

12 *Id.* After treatment, the wastewater is discharged onto the 223-acre discharge fields adjacent to
13 Foster Farms. *Id.* at 3.

14
15 47. Some of Foster Farms' wastewater percolates into the ground, but the remainder—
16 between thirty and forty percent—is permanently lost. Indeed, Foster Farms admits on its website
17 that it returns only sixty to seventy percent of the water it uses to the Subbasin. *Foster Farms*
18 *Appoints Dan Huber as Chief Executive Officer*, Foster Farms, [https://www.fosterfarms.com/](https://www.fosterfarms.com/news/foster-farms-commitment-to-water-conservation/)
19 [news/foster-farms-commitment-to-water-conservation/](https://www.fosterfarms.com/news/foster-farms-commitment-to-water-conservation/) (last visited Sep. 2, 2020); *see* Foster Farms
20 Quarterly Monitoring Report, Fourth Quarter and Annual Report 2018, Table N (Jan. 25, 2019); *see*
21 *also* Monitoring Reporting Program No. R5-2009-0086 8 (2009).

22
23 48. Foster Farms regularly violates its Permit by exceeding its allowed concentrations of
24 nitrogen, biochemical oxygen demand, and total suspended solids, which results in polluted
25 wastewater being discharged to the Merced Subbasin. *See* Foster Farms Quarterly Monitoring
26 Report, Third Quarter 2019, 2-3 (Oct. 25, 2019); Foster Farms Quarterly Monitoring Report, Fourth
27 Quarter and Annual Report 2018 at 3.

1 49. Thus, Foster Farms takes drinkable water from the Subbasin and discharges it back
2 to the ground, in a lower quantity, as undrinkable wastewater that consistently fails to conform to
3 Foster Farms’ Permit and degrades the water quality of the Merced Subbasin.

4 **D. Alternatives to Foster Farms’ Unreasonable Water Use and Methods**

5 50. On information and belief, Foster Farms uses a water-intensive process called
6 “electric immobilization” to paralyze chickens before slaughtering them in a “live-hang” system,
7 which is an unreasonable use and method of use of water that Foster Farms consumes to operate its
8 Livingston slaughterhouse.

9 51. In live-hang slaughter with electric immobilization, workers hang the chickens—
10 who are still alive and fully conscious—upside down by their ankles from metal shackles attached
11 to a moving, overhead conveyer belt.
12

13 52. The California Humane Methods of Slaughter Act provides that chickens “shall be
14 rendered insensible to pain by a captive bolt, gunshot, electrical or chemical means, or any other
15 means that is rapid and effective before being cut, shackled, hoisted, thrown, or cast, with the
16 exception of [chickens, who] may be shackled.” Cal. Food & Agric. Code § 19501(b)(1).
17

18 53. Research shows, however, that the voltage used for electric immobilization in the
19 United States is generally insufficient to render chickens insensible to pain.
20

21 54. The handling and shackling distresses the chickens, causing them to struggle,
22 defecate, and vomit on themselves, on each other, and on the workers. The conveyer belt drags the
23 shackled chickens’ dangling heads through a bath cabinet filled with brine-water. An electrified
24 metal grate is attached to the bottom of the cabinet, which electrifies the brine-water. The brine-
25 water electrocutes the chickens in an attempt to render them immobile and cause them to hang
26 uniformly for slaughter. The conveyer belt then drags the chickens’ necks across an automated
27 blade, slitting their throats. When chickens escape the blade, workers manually slit their throats.
28 The chickens bleed out as the conveyer belt drags them toward the scalding tanks for defeathering.

1 Chickens who have not yet died by the time they reach the scalding tanks either drown or are
2 scalded to death, often defecating in the scalding tanks as they die.

3 55. Live-hang slaughter with electric immobilization requires greater volumes of water
4 than required for other available methods of slaughter that leave the bird carcasses in better
5 condition for “processing.” Due to the conditions of the birds after moving through the live-hang
6 process, electric immobilization requires large volumes of water to clean the feces and vomit from
7 the chickens’ bodies after they die. This is in addition to the water used in the brine-water tanks.
8 In contrast, for example, the “controlled atmosphere killing” slaughter method uses gas to kill
9 chickens while they are still in their transport containers, before they enter the processing line. It
10 eliminates the need for workers to handle and shackle living, moving chickens, as well as the need
11 for the brine-water cabinet. Controlled atmosphere killing therefore greatly reduces stress to the
12 chickens, which reduces the amount of feces and vomit on the chickens’ bodies. It also is far less
13 likely to deliver chickens who are still alive to the scalding tanks, which reduces the amount of
14 feces in the scalding tanks. Together, these differences result in less water needed to clean and
15 decontaminate chicken carcasses during processing, making it a less water-intensive method of
16 slaughter.
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19 56. Controlled atmosphere methods also substantially reduce the cruelty chickens
20 experience leading up to slaughter.
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22 57. Because the birds are not handled while conscious or alive, they are less likely to be
23 subjected to—and therefore should not suffer during—rough handling, violence, abuse, improper
24 stunning, scalding, or defeathering. Thus, any water used in controlled atmosphere systems is for
25 processing carcasses into the final meat product, rather than inflicting or facilitating animal
26 suffering.
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28 58. Controlled atmosphere methods are also safer for workers and could facilitate
compliance with state and federal law during the COVID-19 pandemic. Because the birds are either

1 dead or stunned before they are inverted and shackled, workers are no longer required to struggle
2 with terrified birds and risk suffering the associated occupational injuries and illnesses in the
3 chaotic conditions that accompany live-hang with electric immobilization. Controlled atmosphere
4 methods are also less labor-intensive, better enabling workers to maintain social distance. This is
5 especially important given that eight workers at Foster Farms' Livingston plant have already died
6 from COVID-19, and at least 358 workers have tested positive. Rong-Gong Lin II, *After 8 workers*
7 *die of COVID-19, officials want Merced County Foster Farms plant closed*, LOS ANGELES TIMES
8 (Aug. 28, 2020), [https://www.latimes.com/california/story/2020-08-27/a-foster-farms-plant-is-home-to-](https://www.latimes.com/california/story/2020-08-27/a-foster-farms-plant-is-home-to-one-of-californias-worst-covid-19-outbreaks-officials-want-it-shut-down)
9 [one-of-californias-worst-covid-19-outbreaks-officials-want-it-shut-down](https://www.latimes.com/california/story/2020-08-27/a-foster-farms-plant-is-home-to-one-of-californias-worst-covid-19-outbreaks-officials-want-it-shut-down).
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11 59. Conversion to controlled atmosphere systems is also economically feasible; it
12 requires an initial expense, but is more cost-effective over time. Indeed, Foster Farms has reportedly
13 converted to controlled atmosphere stunning at another slaughterhouse it operates. *See Foster*
14 *Farms Investing \$30 million in Plant Expansion*, Food Business News (Aug. 24, 2017),
15 [https://www.foodbusinessnews.net/articles/9813-foster-farms-investing-30-million-in-plant-](https://www.foodbusinessnews.net/articles/9813-foster-farms-investing-30-million-in-plant-expansion)
16 [expansion](https://www.foodbusinessnews.net/articles/9813-foster-farms-investing-30-million-in-plant-expansion).
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18 PRIVATE ATTORNEY GENERAL DOCTRINE

19 60. Plaintiff brings this action as a private attorney general pursuant to California Code
20 of Civil Procedure section 1021.5, and any other applicable legal theory, to enforce important rights
21 affecting the public interest.

22 61. Issuance of the relief requested in this Complaint will confer significant benefits on
23 the general public by, among other benefits: 1) requiring Defendant to conserve water resources and
24 ensure its usage for the maximum benefit of the People of the State, including conservation within
25 the area of a critically overdrafted groundwater subbasin, and 2) minimizing primary and secondary
26 effects to the public and the environment resulting from Foster Farms' unreasonable use and
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1 method of use of water, including waste of potable water, contaminated water discharges, and
2 unnecessary animal cruelty.

3 62. Issuance of the relief requested in this Complaint will result in the enforcement of
4 important rights affecting the public interest by compelling compliance with the California
5 Constitution's mandate that water be put to reasonable and beneficial uses.

6 **VI. Counts for Relief**

7 **FIRST COUNT FOR RELIEF**

8 **Foster Farms' Water Use Is Unreasonable**
9 **In Violation of Article X, Section 2 of the California Constitution**

10 1. ALDF restates and incorporates all previous paragraphs as if fully set forth herein.

11 2. Foster Farms uses millions of gallons of groundwater each day from the critically
12 overdrafted Merced Subbasin, in large part to facilitate its use of live-hang slaughter with electric
13 immobilization, an unnecessarily water-intensive method of slaughtering chickens.

14 3. Foster Farms returns a lower quantity of groundwater to the Subbasin than it
15 extracts, at a lower quality, and in a different location—all of which impact the overall health of the
16 Subbasin and the residents, ecosystems, and animals who rely on it.

17 4. Foster Farms' water use violates Article X, section 2 of the California Constitution
18 because:

19 a. California is plagued with drought that is exacerbated by the effects of
20 climate change, and there exists an ever-increasing need for water
21 conservation. This constitutes a statewide consideration of transcendent
22 importance.

23 b. The state of existing water resources in the area is dire. The water that Foster
24 Farms uses is sourced from the Merced Subbasin, which is a critically
25 overdrafted groundwater basin. The San Joaquin Valley's already
26 drought-prone condition has been, is being, and will continue to be worsened
27 by the effects of climate change, and the Merced Subbasin will continue in its
28 state of critical overdraft.

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- c. Foster Farms’ use of water far exceeds that of other local users—it alone constitutes more than sixty percent of Livingston’s water use. As a result, Livingston uses more than three times more water than similarly situated users across California.
- d. Foster Farms’ water use has negative secondary impacts on water resources. Foster Farms takes drinkable water from Livingston, uses it for electric immobilization and other chicken processing activities, and discharges it as contaminated wastewater to its 223-acre discharge fields, where sixty to seventy percent of it is lost to evapotranspiration, and what is not lost further degrades groundwater quality in the Merced Subbasin.
- e. Foster Farms’ use of water for electric immobilization is an unreasonable water use and method of use because the voltage generally used in such systems is insufficient to render chickens insensible to pain, inflicting great harm and suffering upon conscious chickens who are shackled, have their throats cut, and are placed into scalding water.
- f. Foster Farms uses a more water-intensive method of slaughtering chickens when an alternative method that is less water-intensive, and more humane, is feasible and readily available.

5. In context, Foster Farms’ use of water for an unnecessarily cruel and costly method of slaughter is per se unreasonable.

6. Water users in the Merced Subbasin region, including ALDF members and supporters, wildlife, and the ecosystem, have suffered, are suffering, and will continue to suffer the consequences of Foster Farms’ unreasonable use and method of use of water. The harms suffered by ALDF and its members is redressable by the relief requested herein.

SECOND COUNT FOR RELIEF


**Foster Farms’ Water Consumption Thwarts Maximum Beneficial Use
In Violation of Article X, Section 2 of the California Constitution**

7. ALDF restates and incorporates all previous paragraphs as if fully set forth herein.

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Date: September 2, 2020

Respectfully submitted,


Jason R. Flanders
AQUA TERRA AERIS
LAW GROUP

Attorneys for Plaintiff

VERIFICATION

I, Jason R. Flanders, declare,

1. I am an attorney representing the Animal Legal Defense Fund, the Plaintiff in this action. I have read the foregoing Complaint and have personal knowledge of the matters therein, or based on information and belief, state that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Civil Procedure Code section 446, subdivision (a) as Plaintiff’s counsel because the Plaintiff is absent from Merced County, where this Court resides, and absent from Alameda County, where counsel for Plaintiff maintain their offices.

2. I declare under penalty of perjury under the laws of California that the foregoing is true, and that this verification was executed in Oakland, California, on September 2, 2020.



Jason R. Flanders
ATA Law Group LLP
Attorneys for Plaintiff Animal Legal
Defense Fund

This e-copy is the official court record (GC68150)

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