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8 OWENS VALLEY COMMITTEE

FILED

DEC 21 2017

INYO CO. SUPERIOR COURT
PAMELA M. FOSTER, CLERK

BY DEPUTY

L. Burton

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF INYO

11 OWENS VALLEY COMMITTEE, a)
12 California Non-profit Corporation;)
13)
14 Petitioner/Plaintiff)

15 v.)

16 CITY OF LOS ANGELES, LOS ANGELES)
17 DEPARTMENT OF WATER AND POWER;)
18 LOS ANGELES DEPARTMENT OF WATER)
19 AND POWER BOARD OF COMMISSIONERS;)
20 and, DOES 1 through 20;)

21 Respondents/Defendants)

22 SIERRA CLUB; COUNTY OF INYO,)
23 CALIFORNIA DEPARTMENT OF FISH AND)
24 WILDLIFE; AND CALIFORNIA STATE)
25 LANDS COMMISSION; and DOES 21)
26 through 40)

27 Real Parties in Interest)
28

Case No. SI00CV17-61853

**VERIFIED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioner/Plaintiff Owens Valley Committee ("OVC") respectfully petitions this Court for a Writ of Mandate directed to the City of Los Angeles, the Los Angeles Department of Water and Power ("DWP") Board of Commissioners; and the Los Angeles Department of Water and Power. Petitioner challenges DWP's November 28, 2017, approval of the Initial Study/Negative Declaration ("IS/ND") for DWP's Well 358R Pumping Test Project ("Project")

1 on the grounds that the Project violates the requirements of the California Environmental
2 Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.*, violates LADWP's
3 obligations and requirements under the 1997 Memorandum of Understanding Between the
4 City of Los Angeles Department of Water and Power, the County of Inyo, the California
5 Department of Fish and Game, the California State Lands Commission, the Sierra Club, the
6 Owens Valley Committee and Carla Scheidlinger ("MOU"); and violates LADWP's
7 obligations and requirements under the 1991 Environmental Impact Report for Water from the
8 Owens Valley to Supply The Second Los Angeles Aqueduct – 1970 to 1990 – 1990 Onward,
9 Pursuant to a Long Term Groundwater Management Plan ("1991 EIR").

10 2. In the IS/ND, LADWP concluded that the Project could not have a significant
11 effect on the environment despite the fact that substantial evidence supports a fair argument
12 that the Project may have significant environmental impacts to vegetation and groundwater.
13 LADWP also approved the Project despite the fact that a mitigation measure adopted pursuant
14 to the 1991 EIR and MOU permanently shut-off Well 385.

15 3. Petitioner seeks a determination from this Court that DWP's approval of the
16 Project is invalid and void and fails to satisfy the requirements of CEQA, and the CEQA
17 Guidelines, Title 14, California Code of Regulations, section 15000 *et seq.* Petitioner also
18 seeks Declaratory Judgment that approval and implementation of the Project would violate the
19 DWP's obligations and requirements under the MOU and 1991 EIR.

20 PARTIES

21 4. Petitioner Owens Valley Committee is a California nonprofit corporation. The
22 specific purposes for which the Owens Valley Committee is organized are to monitor and
23 oversee water management activities in the Owens Valley, to educate the public on local
24 environmental issues, and to exercise the rights and obligations as a signatory to the 1997 MOU,
25 executed to settle disputes related to preparation of an adequate environmental impact report on
26 the City's augmented ground-water pumping project, initiated in the early 1970's in the Owens
27 Valley. The Owens Valley Committee participated as *amicus curiae* in *County of Inyo v. City of*
28 *Los Angeles*, and it is a party to the MOU. OVC and its members have a direct and substantial
VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY JUDGMENT

1 beneficial interest in ensuring that Respondents comply with laws relating to environmental
2 protection. OVC and its members are adversely affected by Respondents' failure to comply with
3 CEQA in approving the Project.

4 5. Defendant City of Los Angeles is a municipal corporation under the laws of the
5 State of California. At all times relevant to this petition, the City exported and continues to
6 export surface water and groundwater from the Owens Valley for use in the City. The City was
7 a defendant in *Inyo County v. Los Angeles* and is a party to the MOU.

8 6. Defendant Los Angeles Department of Water and Power ("DWP") is a political
9 subdivision of the City. Under the City's charter, DWP manages and controls the City's assets in
10 the Owens Valley. Defendant Board of Commissioners ("DWP Board") governs DWP. DWP
11 was a defendant in *Inyo County v. Los Angeles*; it is a party to the MOU, and it is the lead
12 agency under CEQA responsible for the preparation an environmental document for the Project.

13 7. Petitioner is unaware of the true names and identities of DOES 1 through 20 and
14 sue such unnamed Respondents by their fictitious names. Petitioner is informed and believes,
15 and thereon allege, that fictitiously named Defendants also are responsible for all acts and
16 omissions described in this Petition and Complaint. When the true identities and capacities of
17 Respondents have been determined, Petitioner will, with leave of Court if necessary, amend
18 this Petition and Complaint to include such identities and capacities.

19 8. Real Party in Interest Sierra Club is a California nonprofit membership organization
20 incorporated under the laws of the State of California in 1892. The Sierra Club has
21 approximately 500,000 members, approximately one-third of whom live in California. The
22 Sierra Club functions to educate and enlist people to protect and restore the natural and human
23 environment, to practice and promote responsible use of the earth's ecosystems and resources, to
24 explore, enjoy, and protect wild places, and to use all lawful means to achieve these objectives.
25 The Sierra Club participated as an *amicus curiae* in litigation between Inyo County and the City
26 to require the City to complete an EIR for its groundwater-pumping project (see *County of Inyo*
27 *v. City of Los Angeles* (1977) 71 Cal.App.3d 185), and it is a party to the 1997 MOU.

1 environmental impact report or feasible mitigation measures to lessen or avoid the project's
2 significant environmental damage.

3 15. In 1972, the County sued the City and DWP under CEQA to require them to
4 prepare an EIR on their groundwater-pumping project.

5 16. In 1973, the Third District Court of Appeals held that the City and DWP had
6 violated CEQA and ordered the issuance of a peremptory writ of mandamus that required the
7 City and DWP to prepare an EIR. The Court of Appeal also issued an injunction that limited the
8 City's groundwater operations. (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.)

9 17. Although the City and DWP issued EIRs in 1976 and 1979, the Third District Court
10 of Appeals found both to be legally inadequate. (*County of Inyo v. City of Los Angeles* (1977) 71
11 Cal.App.3d 185; *County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1.)

12 18. In 1987, LADWP installed Wells 385 and 386 (W385 and W386) in the Laws
13 wellfield for the purposes of dewatering all adjacent gravel mining operation, supplying water
14 for enhancement/mitigation projects in the Owens Valley, and exporting water to Los Angeles.
15 The pumping of W385 and W386 in 1987-88 contributed to an adverse impact to a 300-acre
16 vegetation parcel south of Owens River in the Five Bridges Area, and pumping was therefore
17 discontinued in 1988.

18 19. A two-month pump test in the 1990s at the original pumping capacity also showed
19 impacts to shallow groundwater in the Five Bridges Area.

20 20. In October 1991, the County, the City, and DWP approved the Inyo County/Los
21 Angeles Long-Term Water Agreement ("Inyo-Los Angeles Agreement") which is intended to
22 provide environmental protection to the Owens Valley from the effects of groundwater pumping
23 and water exports and to identify measures required to mitigate past and future damage to the
24 environment of Inyo County as a result of groundwater pumping.

25 **B. THE 1991 EIR**

26 21. In connection with DWP's augmented groundwater pumping project and the
27 Agreement, the City, DWP and the County together completed a third EIR in October 1991 ("the
28

1 1991 EIR"). In the 1991 EIR, the City and DWP acknowledged that the groundwater-pumping
2 project had caused significant environmental damage.

3 22. The 1991 EIR purported to address all water management practices and facilities
4 associated with DWP's second aqueduct, and projects and water management practices identified
5 in the Agreement.

6 23. The 1991 EIR states:

7 Vegetation in an area of approximately 300 acres near Five Bridges Road north of
8 Bishop was significantly adversely affected during 1988 because of the operation
9 of two wells, to supply water to enhancement/mitigation projects.

10 Between 1987 and 1988, two wells in the Five Bridges area that were pumped to
11 supply water to enhancement mitigation projects contributed to a lowering of the
12 water table under riparian and meadow areas along Owens River. Approximately
13 300 acres of vegetation were affected, and within this area, approximately 36
14 acres lost all vegetation due to a wildfire. The affected area is shown on Figure
15 10-8A. (Impact 10-12 at p. 10-58.)

16 24. Mitigation Measure 10-12 of the 1991 EIR states:

17 Water has been spread over the affected area since 1988. By the summer of 1990,
18 revegetation of native species had begun on approximately 80 percent of the
19 affected area. LADWP and Inyo County are developing a plan to revegetate the
20 entire affected area with riparian and meadow vegetation. This plan will be
21 implemented when it has been completed,

22 25. On October 15, 1991, the DWP Board passed a resolution in which it certified
23 the 1991 EIR and issued findings required by CEQA. On October 18, 1991, the Los Angeles
24 City Council passed an identical resolution.

25 a. found that, as mitigated, the project would no longer have a significant
26 effect on the environment, under Public Resources Code section
27 21081(a); and

28 b. adopted a mitigation "Monitoring Plan" to ensure that the mitigation is
actually implemented, pursuant to Public Resources Code section
21081.6.

29 26. In October 1991, the City and DWP submitted the resolutions and the 1991 EIR to
the Court of Appeal and moved for an order discharging the writ. Shortly thereafter, the Sierra
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1 Club, the Owens Valley Committee, the Department of Fish and Game, and the State Lands
2 Commission, who were participating in the litigation between the County and City as *amici*,
3 raised concerns about the legal adequacy of the 1991 EIR. In 1994, the Court of Appeals denied
4 the County and City's request to discharge the writ of mandate and ordered the County and
5 LADWP to respond to the issues raised by the *amici* concerning the legal adequacy of the Final
6 EIR.

7 **C. THE 1997 MOU**

8 27. After three years of negotiations, in March 1997, the City, DWP, the County, the
9 State Lands Commission, the Department of Fish and Game, the Owens Valley Committee, and
10 the Sierra Club signed the MOU. A true and correct copy of the MOU is attached as Exhibit A
11 to this complaint.

12 28. The MOU requires the City to conduct studies, evaluations, make reports, and
13 perform additional mitigation. (MOU Section III.) Section III.F of the MOU provides:

14 The Technical Group will prepare mitigation plans and implementation schedules
15 for all areas for which on-site mitigation measures have been adopted in the EIR.
16 These plans will be prepared in accordance with the procedures set forth in
17 section I.C.2 of the Green Book. (The Green Book is the technical appendix to
18 the Inyo-Los Angeles Agreement.) The plans will be completed within 12
19 months of the discharge of the writ. The content of the mitigation plans will be in
20 accordance with the EIR, which provides that on-site mitigation will be
21 accomplished through revegetation with native Owens Valley species and through
22 establishment of irrigation."

23 29. The MOU was intended to resolve concerns about the adequacy of the 1991 EIR,
24 particularly concerns related to the adequacy of mitigation described in the 1991 EIR for
25 impacts resulting from the City's groundwater pumping in the Owens Valley from 1970 to
26 1990. The MOU required the City to develop, plan and carry out a number of measures to
27 mitigate the adverse effects of the City's project.

28 30. In light of the execution of the MOU, the parties and the *amici* jointly moved the
Third District Court of Appeals for discharge of the long-standing (since 1973) writ of
mandate requiring the City to prepare a legally adequate EIR in connection with its

1 augmented ground-water pumping project, first initiated in the early 1970's after completion
2 of the City's second aqueduct.

3 31. On June 13, 1997, the Third District Court of Appeals accepted the MOU and
4 discharged the writ, effectively ending twenty-five years of litigation and allowing the full
5 provisions of the Agreement and the mitigation projects contemplated in the Final EIR and
6 MOU to be implemented. The Inyo-Los Angeles Agreement and MOU became effective
7 upon discharge of the Court's writ.

8 32. The 1997 MOU required the Technical Group to prepare a mitigation plan and
9 implementation schedule for the onsite mitigation required by Mitigation Measure 10-12 of the
10 1991 EIR.

11 **D. THE 1999 REVEGETATION PLAN**

12 33. The Inyo/LA Technical Group developed a mitigation plan for the onsite mitigation
13 identified in Mitigation Measure 10-12. The mitigation plan is entitled "Revegetation Plan for
14 Impacts Identified in the LADWP, Inyo County EIR for Groundwater Management" by Irene
15 Yamashita, Inyo County Water Department, August 1999 ("1999 Revegetation Plan").

16 34. The Inyo/LA Technical Group submitted the 1999 Revegetation Plan to the
17 Inyo/LA Standing Committee on October 1, 1999, and this submittal demonstrated the agencies'
18 compliance with the 1997 MOU requirement. The 1999 Revegetation Plan was developed
19 specifically to meet the requirement of the 1997 MOU, Section III.F., that the Technical Group
20 prepare mitigation plans and schedules.

21 35. The 1999 Revegetation Plan requires the two wells, which were the cause of
22 significant die off of riparian and meadow vegetation in the Five Bridges area, wells E/M #385
23 and E/M #386, be "permanently shut down." (DWP now refers to these wells as "Well" or "W"
24 385 or 386, with or without an "R" after the number; the "E/M" designation appears to have
25 been dropped.)

26 36. The mitigation goal for the Five Bridges impact area, according to the 1999
27 Revegetation Plan, was stated as:

1 Goal: *Restore the area to a complex of vegetation communities with similar*
2 *species composition and cover as exists at local similar sites. The goal will be*
3 *attained when the desired vegetation conditions are achieved and are sustainable.*
4 Live cover and composition numbers are from on-site mapping during the 1984-
5 87 vegetation inventory. For Alkali Meadows, live cover goals are 60%
6 composed of four different perennial species. Riparian Scrub live cover goals are
7 90% composed of four different perennial species. Composition numbers are
8 75% of the previously mapped number of species.”

9 37. According to the most recent Annual Reports released by DWP, “Los Angeles
10 Department of Water and Power 2017 Annual Owens Valley Report (May 2017)” and Inyo
11 County Water Department, “Inyo County Water Department 2016-2017 Annual Report,” the
12 Five Bridges mitigation efforts to date have failed to achieve the identified goals.

13 38. In 2014, LADWP sealed approximately the upper 350 feet of screen of W385 and
14 W386, which purportedly reduced the pumping capacity by 72 percent and limited groundwater
15 pumping to only the deep aquifer. DWP renamed the modified wells W385R and W386R.

16 **E. THE CITY’S WELL 385R PUMPING TEST PROJECT AND APPROVAL OF THE PROJECT**

17 39. DWP’s Project consists of a two-month pumping test on modified groundwater
18 Well 385R (W385R). DWP intends to use the data from the pumping test to determine whether
19 W385R is functionally, technically, and hydrologically distinct from original Well 385 and to
20 calibrate the groundwater model for the Bishop/Laws wellfield. DWP claims that the testing of
21 W385R will not result in any net export of water to Los Angeles. The IS/ND states that the
22 proposed Project would not have a significant effect on the environment.

23 40. On September 22, 2017, the City released an Initial Study/Negative Declaration for
24 the Well 385R Pumping Test. The public review and comment period expired on October 23,
25 2017.

26 41. On November 28, 2017, the Board of Commissioners adopted the IS/ND and
27 approved the Project.

28 42. On December 6, 2017, the City filed a Notice of Determination with the Inyo
29 County Clerk.

30 //

31 //

1 **F. DISPUTE RESOLUTION**

2 43. Section VI of the MOU provides for informal dispute resolution that requires any
3 party complaining of a failure to comply the requirements of the MOU to provide a written
4 request for a meeting in Bishop within seven days of the written notice. Section VI also provides
5 for voluntary and non-binding mediation/facilitation.

6 44. By letter dated December 1, 2017, Petitioner initiated dispute resolution under the
7 Section MOU and have requested in writing a meeting of the signatories. (See MOU, § VI.) On
8 December 8, the MOU Parties met in Bishop, California. At that time, the MOU Parties agreed
9 to continue the dispute resolution meeting to December 15, 2017. On December 15, 2017, the
10 MOU Parties reconvened the dispute resolution meeting. The Parties failed to resolve the
11 dispute at the December 15 meeting and the OVC and Sierra Club elected not to send the dispute
12 to a mediator/facilitator.

13 **JURISDICTION AND VENUE**

14 45. This Court has jurisdiction over the matters alleged in this Petition pursuant to
15 Code of Civil Procedure section 1094.5, and Public Resources Code section 21168. In the
16 alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1085 and
17 Public Resources Code section 21168.5. This Court also has jurisdiction over the matters
18 alleged in this Petition and Complaint pursuant to Code of Civil Procedure sections 526, 527,
19 and 1060.

20 46. Pursuant to Code of Civil Procedure section 394(a), venue is proper in this Court
21 because the Project is being carried out and implemented within Inyo County. Additionally,
22 section VII of the MOU provides that any action brought to enforce the MOU shall be brought
23 in Inyo County Superior Court.

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
25 **AND INADEQUACY OF REMEDY**

26 47. Petitioner has performed any and all conditions precedent to filing the instant action
27 and has exhausted any and all available administrative remedies to the extent required by law.
28

1 48. Petitioner has complied with the requirements of Public Resources Code, section
2 21167.5 by mailing written notice of this action to the Respondents. A copy of this written
3 notice and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

4 49. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
5 unless this Court grants the requested writ of mandate to require respondents to set aside their
6 approval of the Project and certification of the EIR. In the absence of such remedies,
7 LADWP's approval will remain in effect in violation of State law.

8 50. This action has been brought within 30 days of LADWP's filing of the Notice of
9 Determination as required by Public Resources Code section 21167(c).

10 STANDING

11 51. Petitioner has standing to assert the claims raised in this Petition and Complaint
12 because Petitioner and its members' aesthetic and environmental interests are directly and
13 adversely affected by LADWP's approval of the Project. Additionally, Petitioner has standing
14 to assert the claims raised in this Petition and Complaint because Petitioner is a signatory to the
15 1997 MOU.

16 CAUSES OF ACTION

17 **FIRST CAUSE OF ACTION** 18 **(Violation of the California Environmental Quality Act,** **Public Resources Code, § 21000 *et seq.*)**

19 52. Petitioner realleges and incorporates by reference Paragraphs 1 through 27,
20 inclusive, of this Petition, as if fully set forth below.

21 53. Respondents' action in adopting the Negative Declaration constitutes a violation of
22 CEQA in that Respondents failed to proceed in the manner required by law and their decision
23 not to prepare an EIR is not supported by substantial evidence. Based upon substantial
24 evidence in the record, a "fair argument" exists that the project may have a significant impact
25 on the environment.
26
27
28

1 54. Substantial evidence in the administrative record supports a "fair argument" that
2 the Project may result in a significant impact to the environment. The substantial evidence
3 before Respondent demonstrates, at a minimum, that:

4 a. **Hydrology:** Substantial evidence supports a fair argument that the project
5 may have significant impacts to groundwater hydrology. For example, groundwater pumping
6 alters the hydrology in the vicinity of the well. Living organisms and resources relying on
7 ground water, such as groundwater dependent vegetation and fish that occupy spring-fed pools,
8 are by definition potentially threatened by the alteration of the water resources on which they
9 depend.

10 b. Sections 1.4.3 and 2.3.9 and Appendix A of the IS/ND identify three
11 trigger levels as management steps in order to avoid potential impacts on groundwater
12 dependent resources and/or domestic wells. (IS/ND at 1-5, 2-22 to 2-23, Appendix A at p. 10.)
13 The IS/ND, however, fails to state what actions LADWP will take if the trigger level is reached.
14 The IS/ND does not state if the pumping test will cease completely or temporarily, or modified
15 in some way. This same flaw exists in section 2.3.9 where the trigger levels are discussed.
16 While the IS/ND acknowledges the potential for potentially significant impacts associated with
17 pumping yet fails to identify any mitigation measures that will be implemented if the trigger
18 levels are reached. (Pub. Resources Code, § 21100, 21151, CEQA Guidelines, § 15063(b).)

19 c. The IS/ND also includes inconsistent statements regarding the Project's
20 potential impacts on groundwater levels. For instance, the IS/ND states that "any potential
21 drawdown will be fully recovered prior to the growing season ..." (IS/ND at p. 2-2 [emphasis
22 added].) Yet, the IS/ND also states that "Groundwater levels are expected to recover to pre-
23 testing condition prior to the growing season (2018). (*Id.* at p. 2-24 [emphasis added].) The
24 IS/ND provides another statement that "Groundwater levels are expected to largely recover to
25 pre-testing conditions prior to the growing season (April 2018)" (*Id.* at p. 2-9 [emphasis
26 added]; see also p. 2-22.) The IS/ND then also states that "Substantial recovery on the
27 anticipated drawdown is expected prior to the start of the growing season." (*Id.* [emphasis
28 added].) The IS/ND's inconsistent statements regarding the anticipated recovery of the water
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1 table results in uncertainty to the public and decision makers. Moreover, it establishes a fair
2 argument that the Project may have impacts to groundwater levels. As such, approval of the
3 IS/MN would constitute a prejudicial abuse of discretion.

4 d. **Biological Resources:** Substantial evidence supports a fair argument that
5 the project may have significant impacts to biological resources. The record demonstrates that
6 Owens Valley hydrograph (water table fluctuation pattern) shows ground water rising from the
7 beginning of fall to the first of spring, reaching a high stand on or about April 1 each year. As
8 temperatures warm during spring and summer and plants absorb and transpire the ground water,
9 the water table drops during the spring and summer period. Substantial evidence supports a fair
10 argument that the proposed test is likely to substantially alter this natural fluctuation, because the
11 pumping draws the water table downward at a time when it would normally be rising. Come
12 April 1, when the groundwater dependent meadow and riparian species need the groundwater, it
13 may be too deep or otherwise not be where it is supposed to be. This situation puts these
14 resources at a disadvantage at best and imposes significant stress at worst.

15 e. Within the existing "Five Bridges Impact Area," (the approximately 300
16 acres of meadow and riparian vegetation adversely affected by the pumping in 1987-88 which
17 has not been satisfactorily mitigated), there was a small population of the state listed
18 endangered species, *Sidalcea covillei* (Owens Valley checkerbloom). The IS/ND mentions that
19 the population showed a downward trend in recent years. (IS/ND at p. 2-8.) In fact, zero plants
20 have been observed in recent years. *Sidalcea covillei* is an herbaceous perennial with a fleshy
21 root system that is groundwater dependent. The species is adversely affected by groundwater
22 pumping (California Native Plant Society Inventory of Rare and Endangered Plants,
23 <http://www.rareplants.cnps.org/detail/1470.html>), and it depends on the normal groundwater
24 fluctuation, with rising and shallow water levels in late winter and early spring, in order to
25 initiate vegetative (rosette) growth in late winter then flower in mid to late spring. While the
26 Five Bridges population may have already been extirpated by LADWP's hydrological
27 manipulations at the Five Bridges Impact Area, certainly additional pumping during winter
28 months will not in any way benefit the rare plant.

1 f. Well 385 sits near the mouth of Fish Slough. Fish Slough is a renowned
2 unique part of the Volcanic Tablelands, and is classified as an Area of Critical Environmental
3 Concern by the federal government and as an Ecological Reserve by the state of California.
4 Relevant to this IS/ND, it possesses springs and spring fed pools, shallow groundwater, and
5 unique soil chemistry. As a result of the hydrology, it is home to numerous rare plant and
6 animal species, such as: Fish Slough milk vetch (*Astragalus lentiginosus* var. *piscinensis*), a
7 federally listed threatened species, alkali mariposa lily (*Calochortus excavatus*), alkali
8 cordgrass (*Spartina gracilis*), hot spring fimbristylis (*Fimbristylis thermalis*), Great Basin
9 centaurium (*Centaurium exaltatum*), King's ivesia (*Ivesia kingii* var. *kingii*), and silverleaf milk
10 vetch (*Astragalus argophyllus* var. *argophyllus*), Owens pupfish (*Cyprinodon radiosus*) a state
11 and federally listed endangered species, Owens speckled dace (*Rhinichthys osculus* ssp. 2),
12 Owens sucker (*Catostomus fumeiventris*), Owens tui chub (*Siphateles bicolor snyderi*) a state
13 and federally listed endangered species, and the Fish Slough springsnail (*Pyrgulopsis*
14 *perturbata*). All of these species rely on the unique hydrology of Fish Slough and its
15 corresponding water quality conditions, so are directly threatened by the operation of well 385.
16 Declines in spring flow caused by groundwater pumping not only diminish critical water supply
17 but also affect water quality by altering water temperatures (shallow water at the surface may
18 rise to a higher temperature than normal), which in turn may affect chemical constituents in the
19 water and soil. The hydrology of Fish Slough remains poorly understood by the scientific
20 community. Nevertheless, operation of well 385 will dewater a deep aquifer in the vicinity of
21 Fish Slough, and this is cause for great alarm.

22 55. Respondents violated their duty to prepare a legally adequate environmental
23 impact report as required by CEQA and the CEQA Guidelines (Title 23 California Code of
24 Regulations, § 15000 *et seq.*). Accordingly, Respondents' approval of the Project must be
25 vacated and set aside.

26 **SECOND CAUSE OF ACTION**
27 **(Violation of the California Environmental Quality Act,**
28 **Public Resources Code, § 21000 *et seq.* (1991 EIR))**

1 the 1999 Revegetation Plan. The 1999 Revegetation Plan, requires that wells 385 and 386,
2 which were the cause of significant die off of riparian and meadow vegetation in the Five
3 Bridges area, be "permanently shut down."

4 66. On November 28, 2017, the DWP Board of Commissioners approved the Well
5 385R Pumping Test. The approval directly violates the 1999 Revegetation Plan and section
6 III.F of the MOU.

7 67. Petitioner also has a direct and beneficial interest in the implementation of the
8 mitigation measures and studies and evaluations required by the MOU. Petitioner also has a
9 direct and beneficial interest in enforcing the requirements of MOU.

10 68. Plaintiffs have no plain, speedy, or adequate remedy, in the ordinary course of law,
11 other than this Complaint and Petition.

12 69. There exists an actual controversy between Petitioner and Respondents and over
13 whether Respondents' pumping of Well 385 violates the 1999 Revegetation Plan and section
14 III.F of the MOU.

15 70. Petitioner respectfully requests that the Court issues a declaratory judgment
16 resolving this dispute and declare that Respondents' pumping of groundwater from well 385
17 violates Respondents' obligations and requirements under the 1999 Revegetation Plan and
18 section III.F. of the MOU.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner prays for judgment as follows:

21 1. As to the First Cause of Action, that this Court issue a peremptory writ of mandate
22 ordering Respondents to:

23 (a) vacate and set aside approval of the Negative Declaration on the grounds
24 that it violates the California Environmental Quality Act, Public Resources Code section 21000
25 *et seq.*

26 (b) vacate and set aside the November 28, 2017, approval of the Project;

27 (c) withdraw the Notice of Determination for the Project;

28 (d) prepare, circulate and consider a legally adequate EIR for the Project;

1 (e) suspend approval of any and all construction of the Project until the
2 Respondents are in compliance with CEQA;

3 (f) suspend all activity that could result in any change or alteration to the
4 physical environment until Respondents have taken such actions as may be necessary to bring
5 their determination, findings or decision regarding the Project into compliance with CEQA;

6 2. As to the Second Cause of Action, that this Court issue a peremptory writ of
7 mandate ordering Respondents to:

8 (a) vacate and set aside approval of the Negative Declaration on the grounds
9 that it violates the California Environmental Quality Act, Public Resources Code section 21000
10 *et seq.*

11 (b) vacate and set aside the November 28, 2017, approval of the Project;

12 (c) withdraw the Notice of Determination for the Project;

13 3. As to the third cause of action for a Declaratory Judgment that Respondents
14 approval of the Project violates Section III.F of the MOU and injunction prohibiting
15 Respondents' from pumping groundwater from Wells 385 and 386. Also as to the third cause
16 of action, for injunctive relief enjoining the City and DWP from pumping water from Wells
17 385 and 396.

18 4. For Petitioner's costs associated with this action;

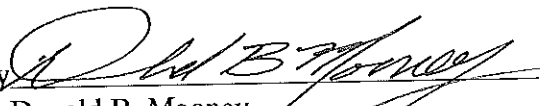
19 5. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure
20 section 1021.5; and

21 5. For such other and further relief as the Court may deem just and proper.

22 Dated: December 19, 2017

Respectfully submitted,

23 LAW OFFICES OF DONALD B. MOONEY

24 By 
25 Donald B. Mooney
26 Attorneys for Petitioner
27 Owens Valley Committee
28

VERIFICATION

1
2 I am the attorney for Petitioners Owens Valley Committee who is located outside the
3 County of Yolo, State of California, where I have my office. For that reason, I make this
4 verification for and on its behalf pursuant to the California Code of Civil Procedure section 446.
5 I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory
6 and Injunctive Relief and know its contents. The matters stated in this Verified Petition for
7 Writ of Mandate and Complaint for Declaratory and Injunctive Relief are true of my own
8 knowledge except those matters stated on information and belief, and as to those matters I
9 believe them to be true.

10 I declare under penalty of perjury that the above is true and correct. Executed this 19th
11 day of December 2017, at Davis, California.

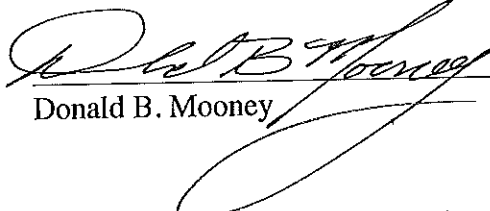
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14 Donald B. Mooney
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EXHIBIT A

EXHIBIT A

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

129 C Street, Suite 2
Davis, California 95616
Telephone (530) 758-2377
Facsimile (530) 758-7169
dbmooney@dcn.org

December 19, 2017

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Holly L. Wolcott, City Clerk
City of Los Angeles
City Hall Office
200 N. Spring Street, Room 360
Los Angeles, CA 90012
CityClerk@lacity.org

David H. Wright, General Manager
Board of Water and Power Commissioners
Los Angeles Department of Water and Power
111 North Hope Street, Room 1555-H
Los Angeles, CA 90012

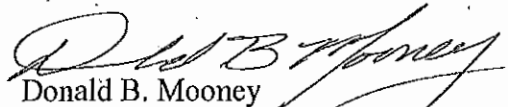
Re: NOTICE OF INTENT TO FILE CEQA PETITION

Dear Ms. Wolcott & Mr. Wright:

Please take notice that under Public Resources Code section 21167.5, Petitioner Owens Valley Committee intends to file a Petition for Writ of Mandate in Inyo County Superior Court under the provisions of the California Environmental Quality Act against the City of Los Angeles, the Board of Commissioners of Los Angeles Department of Water and Power; and the Los Angeles Department of Water and Power. Petitioners will challenge LADWP's November 28, 2017, approval of the Well 385R Pumping Test Project and the Initial Study/Negative Declaration ("IS/ND"). Petitioner alleges that LADWP's approval of the Project and IS/ND violates the requirements of CEQA, Public Resources Code, section 21000 *et seq.*

The Petition for Writ of Mandate will request that the court direct Respondents to vacate and approval of the IS/ND and approval of the Project. Additionally, the petition will seek Petitioner's costs and attorney's fees associated with this action.

Very truly yours,


Donald B. Mooney
Attorney for Owens Valley Committee

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 129 C Street, Suite 2 Davis, California; I am over the age of 18 years and not a party to the foregoing action. On December 19, 2017, I served a true and correct copy of as follows:

**Notice of Intent to File CEQA Petition
Public Resources Code section 21167.5**

___ (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in Davis, California.

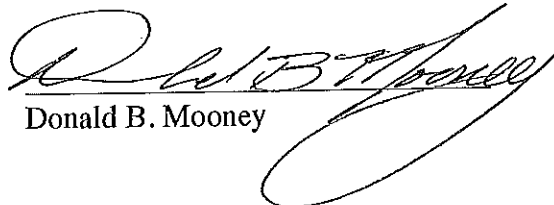
X (by overnight delivery service) via Federal Express to the person at the address set forth below:

___ (by facsimile transmission) and via Federal Express to the person at the address and phone number set forth below:

Holly L. Wolcott, City Clerk
City of Los Angeles
City Hall Office
200 N. Spring Street, Room 360
Los Angeles, CA 90012
CityClerk@lacity.org

David H. Wright, General Manager
Board of Water and Power Commissioners
Los Angeles Department of Water and Power
111 North Hope Street, Room 1555-H
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct. Executed December 19, 2017, at Davis, California.


Donald B. Mooney