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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO
BY: [Signature]

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14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF MONO

16 COUNTY OF MONO,)

17)
18 Petitioners)

19 v.)

20 CITY OF LOS ANGELES, LOS ANGELES)
21 DEPARTMENT OF WATER AND POWER;)
22 LOS ANGELES DEPARTMENT OF WATER)
AND POWER BOARD OF COMMISSIONERS;)
and, DOES 1 through 20;)

23 Respondents/Defendants)

24 CALIFORNIA DEPARTMENT OF FISH)
25 AND WILDLIFE; and DOES 21 through 40)

26 Real Parties in Interest)
27)
28)

Case No. CV180078

**VERIFIED PETITION FOR
WRIT OF MANDATE**

INTRODUCTION

1. Petitioner COUNTY OF MONO ("Petitioner" or "County") respectfully petitions this Court for a Writ of Mandate directed to the Respondents CITY OF LOS ANGELES, THE LOS ANGELES DEPARTMENT OF WATER AND POWER BOARD OF COMMISSIONERS; AND THE LOS ANGELES DEPARTMENT OF WATER AND POWER (collectively, "Respondents"). Petitioner challenges Respondents' decision and/or action to change its historic land management practices including curtailing and/or reducing water deliveries to lands in Mono County owned by the City of Los Angeles on the grounds that Respondent failed to comply with the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.*

2. Petitioner seeks a determination from this Court that Respondents' decision/action to modify more than seventy years of its land management practices by significantly reducing water deliveries to approximately 6,400 acres of land in Mono County owned by the City of Los Angeles, undertaking direct management of portions of those lands itself and increasing the amount of water it exports from Mono County, ("Project") is invalid and void and fails to satisfy the requirements of CEQA and the CEQA Guidelines, Title 14, California Code of Regulations, section 15000 *et seq* ("CEQA Guidelines").

3. Respondents' change in management practices, including curtailment of the supply of water on the Los Angeles-owned lands within Mono County and increased water export, will have/has had significant and irreparable environmental impacts to wildlife by destroying wetlands and meadows and eliminating habitat for sensitive species such as the Bi-State Sage Grouse. The Project has also adversely affected visual/aesthetic resources adjacent to State-designated scenic Highway 395 in Mono County, adversely affected recreational resources and significantly increased the risk of wildfires, which would threaten residences, communities and property within Mono County adjacent to these Los Angeles-owned lands.

4. Prior to changing its historic land management practices, reducing the amount of water supplied to the 6,400 acres and thereby increasing the amount of water exported from

1 Mono County. Respondents did not conduct any environmental review under CEQA. Thus,
2 neither decisionmakers nor the public were provided information regarding the potential
3 significant impacts that such decision/action may have on biological resources such as the Bi-
4 State Sage Grouse or other species, visual/aesthetic resources, recreational resources,
5 wetlands, and public safety.

6 **PARTIES**

7 5. Petitioner is a political subdivision of the State of California. The County and its
8 citizens will be directly affected by the impacts of the Project. The County and its citizens have
9 a particular interest in the protection of the environment of Mono County and are concerned
10 about deteriorating environmental and land use conditions that detrimentally affect their well
11 being and that of other residents and visitors of Mono County. The County and its citizens have
12 a direct and substantial beneficial interest in ensuring that Respondents comply with laws
13 relating to environmental protection. The County and its citizens are adversely affected by
14 Respondents' failure to comply with CEQA in significantly curtailing water deliveries to Los
15 Angeles-owned lands in Mono County.

16 6. Respondent City of Los Angeles is a municipal corporation under the laws of the
17 State of California. At all times relevant to this Petition, Respondent City of Los Angeles
18 exported and continues to export surface water from Mono County for use in areas outside of
19 Mono County and in the City of Los Angeles.

20 7. Respondent Los Angeles Department of Water and Power ("LADWP") is a political
21 subdivision of the City. Under the City of Los Angeles's charter, LADWP manages and controls
22 the City's properties and assets in Mono County.

23 8. Respondent LADWP Board of Commissioners ("LADWP Board") governs
24 LADWP. LADWP is the lead agency under CEQA responsible for the preparation an
25 environmental document for the Project.

26 9. Petitioner is unaware of the true names and identities of DOES 1 through 20 and
27 sue such unnamed Respondents by their fictitious names. Petitioner is informed and believes,
28

1 and thereon alleges, that fictitiously named Defendants also are responsible for all acts and
2 omissions described in this Petition. When the true identities and capacities of Respondents
3 have been determined, Petitioner will, with leave of Court if necessary, amend this Petition to
4 include such identities and capacities.

5 10. Real Party in Interest California Department of Fish and Wildlife ("CDFW") is a
6 political subdivision of the State of California. CDFW is a trustee agency under CEQA
7 responsible for the protection of the Bi-State Sage Grouse and other trust resources within Mono
8 County.

9 11. Petitioner is unaware of the true names and identities of DOES 21 through 40 and
10 sue such unnamed Real Parties in Interests by their fictitious names. Petitioner is informed and
11 believes, and thereon alleges, that fictitiously named Real Parties in Interest have an interest in
12 the subject of this Petition. When the true identities and capacities of Real Parties in Interests
13 have been determined, Petitioner will, with leave of Court if necessary, amend this Petition to
14 include such identities and capacities.

15 **BACKGROUND INFORMATION**

16 **A. RESPONDENTS' ACQUISITION OF LAND AND WATER RIGHTS IN MONO COUNTY**

17 12. In the early part of the twentieth century, Respondent City of Los Angeles
18 surreptitiously acquired land and water rights throughout the Eastern Sierra area, including in
19 Mono County, as part of a plan by William Mulholland and others to construct an aqueduct to
20 export water from the Eastern Sierra area to the then-developing City of Los Angeles. As a
21 result, Respondents now own over 62,000 acres of land in Mono County and export vast
22 amounts of water from Mono County.

23 13. Approximately 6,400 acres of Los Angeles-owned land in the Long Valley and
24 Little Round Valley areas of Mono County has historically been leased and supplied with water
25 for cattle grazing. Under the leases, up to 5 acre feet of water per acre (AF/acre) per year has
26 been provided by LADWP to the lessees of the land to enable them to conduct cattle grazing
27 operations and to create wetland and meadow habitat. The leases require that the lessees
28

1 maintain and manage the lands.

2 14. LADWP has provided an average of approximately 25,000 – 30,000 acre feet (AF)
3 of water to these lands for more than 70 years, with the exception of 2015, the peak of the
4 California drought, when by agreement with the lessees, no water was provided. Additionally,
5 in 2016, the first year of recovery following the drought, when supplies had been depleted,
6 LADWP provided only 4,600 AF of water (0.71 AF/acre, approximately 20% of historic
7 amounts) also by agreement with the lessees.

8 15. Water supplied by LADWP through the leases and applied to the lands by the
9 lessees has resulted in the creation, preservation, conservation, and restoration of biological and
10 scenic resources in Mono County, including wetland and meadow habitat which provides forage
11 and habitat for the Bi-State Sage Grouse and other plant and animal species, is a scenic asset
12 vital to Mono County's recreation economy, and provides a protective buffer against wildfire.

13 **B. THE BI-STATE SAGE GROUSE**

14 16. The Bi-State Distinctive Population Segment of the greater sage grouse ("Bi-State
15 Sage Grouse") is a genetically unique meta-population that lives in the far southwestern limit of
16 the species' range in California and Nevada. This genetic distinction may be the result of
17 natural geologic events and subsequent long-term geographic isolation based on prevailing
18 physiographic and habitat conditions.

19 17. The range of the Bi-State Sage Grouse covers an area approximately 170-miles
20 long and up to 60 miles wide and includes portions of five counties in western Nevada:
21 Douglas, Lyon, Carson City, Mineral, and Esmeralda; and three counties in eastern California:
22 Alpine, Mono, and Inyo.

23 18. Sage-grouse depend on a variety of shrub steppe vegetation communities
24 throughout their life cycle and are considered obligate users of several species of sagebrush..

25 19. The 6,400 acres of Los Angeles-owned land in the Long Valley area of Mono
26 County and historically irrigated and managed by the lessees serves as habitat crucial to the
27 conservation of Bi-State Sage Grouse, supporting one of only two core Bi-State Sage Grouse
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1 populations in the bi-state area, with 30% of the entire Bi-State Sage Grouse population
2 within California.

3 20. A 2012 Bi-State Action Plan identifies management actions and goals for the
4 protection of the Bi-State Sage Grouse. The plan clearly states that irrigated meadows
5 provide crucial habitat for successful brood rearing.

6 21. In 2015, the United States Fish and Wildlife Service decided not to list the Bi-State
7 Sage Grouse as endangered or threatened under the federal Endangered Species Act ("ESA")
8 because of the unified conservation efforts of local, state and federal agencies, non-profit
9 organizations, and local landowners. These stakeholders combined to develop a conservation
10 plan as an alternative to listing the species under the ESA. This effort was spearheaded by
11 individuals, agencies, landowners and organizations in both California and Nevada, including
12 Mono County, who gathered together to form a working group to identify management
13 measures to sustain the species and prevents its listing under the ESA.

14 22. While sage-grouse adults may be able to subsist wholly on sagebrush leaves
15 during the winter, the baby birds need the insects found amongst the forbs and grasses in wet
16 meadows and irrigated pastures found in the spring and summer.

17 **C. RESPONDENTS' DECISION/ACTION TO SIGNIFICANTLY REDUCE OR ELIMINATE**
18 **WATER DELIVERIES IN MONO COUNTY**

19 23. In March 2018, LADWP provided lessees in the Long Valley and Little Round
20 Valley areas of Mono County new proposed leases, which provided that no irrigation water
21 would be supplied to the 6,400 acres leased for ranching. Historically, leases provided up to 5
22 AF/acre per year or up to approximately 31,000 AFY in total. LADWP's new proposed leases
23 would have eliminated this entire amount beginning in the Summer of 2018.

24 24. On April 19, 2018, the County sent a letter to Los Angeles Mayor Eric Garcetti
25 detailing the potential impacts of LADWP's proposal and identifying the need for LADWP to
26 comply with state and federal environmental laws prior to adopting the new leases. The County
27 also appealed to the Mayor's interests both in sustainability and in maintaining the longstanding
28

1 relationship between the City and the County.

2 25. On May 1, 2018, Mayor Garcetti responded by stating that LADWP would analyze
3 the environmental impacts of the new proposed "waterless" leases and that LADWP would
4 provide lessees some amount of water to apply to the lands in the meantime (i.e., for the 2018
5 irrigation season) pursuant to then-expired leases.

6 26. On May 1, 2018, LADWP notified the lessees that the amount of irrigation water
7 to be provided in 2018 would be only 4,600 AF (or 0.71 AF/acre), well below the historic
8 annual average supplied to the 6,400 acres (with the exception of drought year 2015 and
9 recovery year 2016), despite 2017 having been the wettest year on record in over fifty years and
10 anticipated runoff for 2018 forecast at 78% of normal.

11 27. On May 3, 2018, the County responded to Respondents and requested that
12 LADWP continue its practice of providing up to 5 AF/acre, agreeing that it could be offset
13 based on snowpack and anticipated runoff (78% of anticipated runoff for 2018).

14 28. LADWP refused and instead provided only 4,600 AF (or 0.71 AF/acre) for
15 Summer 2018, with no commitment of any water in future years.

16 29. Following notification by the County and others that its plan would impact the Bi-
17 State Sage Grouse, LADWP determined that it would deliver and spread an additional 500 AF
18 of water to an area within the 6,400 acres known to support Bi-State Sage Grouse populations
19 based on its own calculation of when and how much water was needed for the Sage Grouse.
20 This delivery began in on June 19 and was originally scheduled to end August 4. Subsequently,
21 LADWP stated that it would continue this delivery through the end of August, resulting in a
22 total additional delivery of approximately 1,100 AF. LADWP provided no scientific basis for
23 its initial reduction to 4,600 AF provided through the leases, nor for this minimal increase
24 outside of the leases and conducted no environmental review prior to taking these
25 decisions/actions.

26 **D. ELIMINATION AND REDUCTION OF WATER DELIVERIES WILL HAVE SIGNIFICANT**
27 **ENVIRONMENTAL IMPACTS**

28 30. LADWP's significant curtailment of water deliveries in 2018 to its leased lands

1 has dried up wetlands and meadows that are dependent on the supply of irrigation water and
2 resulting in potentially significant and irreparable impacts to biological resources including the
3 Bi-State Sage Grouse and other plant and animal species.

4 31. LADWP's significant curtailment of water deliveries to leased lands and to habitat
5 for Bi-State Sage Grouse has had and will continue to have potentially significant and
6 irreparable impacts to wetlands, visual/aesthetic resources, and to public health and safety in
7 terms of increased risk of wildfires in Mono County due to the creation of dry fire fuel and
8 incursion of invasive species such as cheatgrass, tumble mustard, and bull thistle.

9 **JURISDICTION AND VENUE**

10 32. This Court has jurisdiction over the matters alleged in this Petition pursuant to
11 Code of Civil Procedure section 1085, and Public Resources Code section 21168.5. In the
12 alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and
13 Public Resources Code section 21168.

14 33. Pursuant to Code of Civil Procedure section 394(a), venue is proper in this Court
15 because the Project is being carried out and implemented within Mono County.

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES** 17 **AND INADEQUACY OF REMEDY**

18 34. Petitioner has performed any and all conditions precedent to filing the instant action
19 and has exhausted any and all available administrative remedies to the extent required by law.

20 35. LADWP provided no administrative process prior to its decision/action to change
21 its historic water supply practices and significantly reduce the amount of water supplied to the
22 6,400 acres of leased lands in Long Valley and Little Round Valley; thus, Petitioner was unable
23 to participate in such a process. Pursuant to Public Resources Code section 21177(e), the
24 requirement to exhaust administrative remedies is inapplicable when there was no public hearing
25 or other opportunity for members of the public to raise objections before approval of a project.

26 36. Petitioner has complied with the requirements of Public Resources Code section
27 21167.5 by mailing written notice of this action to the Respondents. A copy of this written
28 notice and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

1 37. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law
2 unless this Court grants the requested writ of mandate to require Respondents to set aside their
3 decision/action to significantly reduce water deliveries to the 6,400 acres of lands leased by
4 Los Angeles to lessees in Mono County in 2018. In the absence of such remedies, LADWP's
5 decision to reduce water deliveries in Mono County will remain in violation of state law.

6 38. As required by Public Resources Code section 21167(a), this action has been
7 brought within 180 days of Respondents' decision/action to reduce water deliveries to Los
8 Angeles-owned lands in Mono County and export additional amounts from Mono County,
9 which commenced on or about May 1, 2018.

10 **STANDING**

11 39. Petitioner has standing to assert the claims raised in this Petition because
12 Petitioner and its citizens' environmental interests are directly and adversely affected by
13 Respondents' discretionary decision/action to reduce water deliveries in Mono County.

14 **CAUSE OF ACTION**

15 **(Violation of the California Environmental Quality Act, 16 Public Resources Code, § 21000 *et seq.*)**

17 40. Petitioner realleges and incorporates by reference Paragraphs 1 through 39,
18 inclusive, of this Petition, as if fully set forth below.

19 41. Respondents' decision/action to changes its historic land management practices
20 and significantly reduce water deliveries to the 6,400 acres of Los Angeles-owned lands in
21 Mono County in order to increase water export constitutes an approval of a project that
22 mandates compliance with the California Environmental Quality Act, Public Resources Code,
23 section 21000 *et seq.*

24 42. CEQA defines a "project" as "an activity that may cause either a direct physical
25 change in the environment, or a reasonably foreseeable indirect physical change in the
26 environment, which constitutes an activity directly undertaken by any public agency." (Pub.
27 Resources Code, § 21065.)
28

1 43. The CEQA Guidelines further define a "project" as "the whole of an action, which
2 has a potential for resulting in either a direct physical change in the environment, or a
3 reasonably foreseeable indirect physical change in the environment" and that is an activity
4 directly undertaken by any public agency activity which is being approved and which may be
5 subject to several discretionary approvals by governmental agencies. (CEQA Guidelines, §
6 15378(a)(1).)

7 44. The term "approval" refers to a public agency decision that commits the agency to
8 a definite course of action in regard to a project. (CEQA Guidelines, § 15352(a).) The
9 definition of "approval" applies to all projects including actions authorized or carried out by a
10 public agency. (*Id.*)

11 45. CEQA requires the preparation of an environmental document in order to identify
12 the potentially significant effects on the environment of a project, so that measures to mitigate
13 or avoid those effects, or alternatives that avoid those effects, can be devised. (Pub. Resources
14 Code, §§ 21002.1(a), 21100; CEQA Guidelines, §§ 15070, 15081.) Compliance with the
15 procedural requirements of CEQA sets the stage for development of mitigation measures and
16 alternatives. Without a proper procedural foundation, an agency cannot comply with CEQA's
17 mandate that public agencies should not approve projects as proposed if there are feasible
18 alternatives or feasible mitigation measures available which would substantially lessen the
19 significant environmental effects of such projects. (Pub. Resources Code, § 21002.)

20 46. "CEQA is a comprehensive scheme designed to provide long-term protection to the
21 environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public
22 agencies responsible for regulating activities affecting the environment give prime consideration
23 to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be
24 interpreted 'to afford the fullest possible protection to the environment within the reasonable
25 scope of the statutory language.' [Citation.]" (*Mountain Lion Foundation v. Fish & Game Com.*
26 (1997) 16 Cal.4th 105, 112.)
27
28

1 47. A fundamental goal of CEQA is to foster informed decision-making and to fully
2 inform decisionmakers and the public about the project and its impacts. (CEQA Guidelines, §
3 15003.)

4 48. An environmental document must provide public agencies and the public in general
5 with detailed information about the effect that a project is likely to have on the environment, to
6 list ways in which the significant effects of a project might be minimized, and to indicate
7 alternatives to such a project. (Pub. Resources Code, § 21061.)

8 49. CEQA requires that an agency provide full disclosure of a project's significant
9 environmental effects so that decision makers and the public are informed of consequences
10 before a project is approved, to ensure that government officials are held accountable for these
11 consequences. (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of the*
12 *University of California* (1988) 47 Cal.3d 376, 392.)

13 50. Respondents' decision to significantly reduce water deliveries in to the 6,400 acres
14 of Los Angeles-owned lands in the Long Valley and Little Round Valley area of Mono County
15 constitutes an approval of a project under CEQA that may have potentially significant impacts
16 to biological resources and public health and safety (fire hazards).

17 51. Respondents violated their duty to prepare an environment document as required
18 by CEQA and the CEQA Guidelines. As such, Respondents' decision to significantly reduce
19 water deliveries to the 6,400 acres of Los Angeles-owned lands in Mono County is contrary to
20 law and constitutes a prejudicial abuse of discretion. Accordingly, Respondents' decision to
21 significantly reduce water deliveries must be vacated and set aside.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner prays for judgment as follows:

24 1. That this Court issue a peremptory writ of mandate and Preliminary Injunction
25 ordering Respondents to:
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1 (a) vacate and set aside its decision/action to significantly curtail water
2 deliveries to the 6,400 acres of Los Angeles-owned land in the Long Valley and Little Round
3 Valley areas of Mono County;

4 (b) direct Respondents to immediately resume supplying irrigation to the 6,400
5 acres of Los Angeles-owned land in the Long Valley and Little Round Valley area of Mono
6 County in an amount consistent with its historic water supply practices over the past seventy
7 years and continue supplying such water until Respondents have prepared, circulated and
8 considered a legally adequate environmental document under CEQA;

9 (c) prepare, circulate, and consider a legally adequate environmental
10 document under CEQA;

11 (d) suspend all activity that could result in any change or alteration to the
12 physical environment until Respondents have taken such actions as may be necessary to bring
13 their determination, findings, or decision regarding the curtailment of water deliveries into
14 compliance with CEQA;

15 2. For Petitioners' costs associated with this action;

16 3. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure
17 section 1021.5; and

18 4. For such other and further relief as the Court may deem just and proper.
19

20 Respectfully submitted,

21 Dated: August 15, 2018

22 MONO COUNTY COUNSEL

23 By: 

24 Stacey Simon
25 Attorney for Petitioner
26 County of Mono
27
28