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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

9 Attorneys for Plaintiff/Petitioner,
Alpaugh Irrigation District
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF FRESNO**
13

14 ALPAUGH IRRIGATION DISTRICT,
15 Plaintiff/Petitioner,
16 v.
17 COUNTY OF TULARE and DOES 1-20,
18 Defendants/Respondents,
19

Case No. [20CECG02606](#)

**VERIFIED PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS, WRIT
OF MANDATE, AND COMPLAINT FOR
DECLARATORY RELIEF**

Public Resources Code section 21168, Code of
Civil Procedure sections 1094.5, 1085, 1060,
and 527.

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21 ANGIOLA EAST, LLC
22 Real Party in Interest.
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28 Plaintiff and Petitioner Alpaugh Irrigation District ("Alpaugh") hereby petitions this Court

1 Plaintiff and Petitioner Alpaugh Irrigation District (“Alpaugh”) hereby petitions this Court
2 for a Writ of Administrative Mandamus, a Writ of Mandate and for Declaratory and Injunctive
3 Relief and by this Verified Petition and Complaint (“Petition”) alleges:

4 **PARTIES**

5 1. Petitioner and Plaintiff, Alpaugh Irrigation District, is a California Irrigation District
6 formed and governed by California law, specifically Division 11 of the California Water Code.
7 Alpaugh’s jurisdictional boundaries and its offices are in southwestern Tulare County. Alpaugh is
8 empowered to commence and maintain civil actions and proceedings to carry out its purposes and
9 protect its interests. Alpaugh brings this action on behalf of itself and the residents and landowners
10 it serves.

11 2. Respondent and Defendant County of Tulare (“County”) is a political subdivision of
12 the State of California and is the lead agency for a project subject to the California Environmental
13 Quality Act (“CEQA”), Public Resources Code section 21000 et seq. County erroneously adopted
14 a Mitigated Negative Declaration in violation of CEQA that is the subject of this action.

15 3. Real Party in Interest Angiola East, LLC (“Angiola”), is the proponent and developer
16 of a proposed 277-acre solar project (“Project”) that is within the territorial limits of Alpaugh and
17 near the unincorporated community of Alpaugh. The Project was erroneously approved by the
18 County in the Mitigated Negative Declaration that is challenged in this action.

19 4. Alpaugh is ignorant of the true names and capacities of Respondents and Defendants
20 DOES 1 -20 who are, therefore, sued by such fictitious names. Alpaugh is informed and believes
21 that each of the DOE defendants/respondents is directly and proximately responsible for the actions
22 complained of herein and participated in making and facilitating them. Alpaugh will amend this
23 Petition to set forth the true names and capacities of the DOE defendants/respondents when the same
24 have been ascertained.

25 **FACTUAL BACKGROUND**

26 5. Angiola proposes to construct a 277-acre solar project on two non-contiguous sites
27 along Avenue 42, about 1.25 miles southeast of the community of Alpaugh in Tulare County. The
28 Project will consist of 138,408 solar modules mounted on single-axis trackers and produce

1 approximately 40 megawatts of electricity. The Project will include 11 inverter stations, associated
2 motors, torque tubes, and drivelines along with the associated underground cables, combiner boxes,
3 inverters, and transformers. It will include an on-site substation and switchyard that will connect to
4 a new one-mile long 138-kV transmission line.

5 6. The Project will include the construction of access roads and internal roads, at least
6 20-foot wide, of gravel, compacted earth, or other suitable surface. The Project will be enclosed
7 within a 6-foot high chain-link security fence and have motion-activated lighting fixtures at intervals
8 around the perimeter. Construction will require the use of graders, trenchers, tractors, a crane, and
9 other equipment. An estimated 150 to 450 construction vehicle trips per day will be necessary to
10 transport construction workers, materiel, equipment, support poles, and other project components.

11 7. The Project will take 6 to 9 months to complete, not including 2 to 3 weeks of initial
12 grading. It is expected to have a useful economic life of 35 years.

13 8. The County is the “lead agency” for the Project under CEQA and is required by
14 CEQA to perform an environmental review of the Project and its expected environmental impacts.
15 In this instance, the County did not prepare an environmental impact report. Instead, it adopted a
16 Mitigated Negative Declaration which erroneously found the Project will have no significant
17 adverse impact on the environment.

18 9. The proposed Mitigated Negative Declaration that the County circulated was based
19 on inaccurate and false statements of fact, including an erroneous description of the proposed
20 Project, an incorrect location for the proposed Project, misidentification of other parties affected by
21 the proposed Project, and it failed to identify or include all the parties that would be affected by the
22 proposed Project. Although the County substantially revised the proposed Mitigated Negative
23 Declaration, it failed and refused to recirculate a corrected proposed Mitigated Negative Declaration
24 as required by CEQA.

25 10. The County conducted public hearings on the proposed Project at which evidence
26 was received and a record made. Alpaugh submitted written comments and objections to the County
27 about the proposed Project and testified at the public hearing. Alpaugh’s written comments and
28 testimony raised the issues challenged by this Petition. Alpaugh’s written comments and testimony

1 comprise part of the administrative record of the County's proceedings.

2 11. In addition to the defective and erroneously adopted Mitigated Negative Declaration,
3 Angiola does not have adequate or legal access to the Project location and will be required to use
4 rights-of-way and structures owned by Alpaugh over which Angiola has no rights of usage and
5 which are structurally inadequate and unsafe for Angiola's use.

6 12. The County's Planning Commission approved the Project on July 8, 2020 but the
7 County did not post the requisite Notice of Determination until August 5, 2020 in violation of its
8 obligations under CEQA. This action is timely filed within 30 days of the eventual posting, as
9 required by Public Resources Code section 21167(b).

10 13. Alpaugh has exhausted all available administrative remedies and all conditions
11 precedent to commencing this action and has provided written notice to the County of its intention
12 to commence this action.

13 **VENUE**

14 14. Venue in the Fresno County Superior Court is proper under Code of Civil
15 Procedure section 394 because the County and Alpaugh are both public agencies situated in Tulare
16 County.

17 **FIRST CAUSE OF ACTION**
18 **(Petition for Writ of Administrative Mandamus**
19 **Pub. Res. Code § 21168, Code of Civil Procedure § 1094.5)**

20 15. Paragraphs 1 through 14, inclusive, are incorporated herein.

21 16. The County is considered a "lead agency" under CEQA and, as such, is required by
22 law to fully evaluate and disclose to decision makers and to the public all potential environmental
23 effects of a proposed approval, before making decisions or taking action to approve a project.

24 17. As a lead agency under CEQA, the County is required to use its best efforts to find
25 out and disclose all that it reasonably can about a proposed project and its environmental impacts
26 before taking any action to approve the project. CEQA defines a "project" to include the whole of
27 an action that may result in either a direct or reasonably foreseeable indirect physical change in the
28 environment. CEQA prohibits a lead agency from approving a project that will have significant
environmental effects if there are feasible alternatives or mitigation measures that can substantially

1 lessen or avoid those effects. The agency's factual conclusions must be supported by substantial
2 evidence in the light of the whole record. "Substantial evidence" is defined as relevant, reasonable
3 information and inferences that support fair arguments can be made to support a conclusion,
4 including facts, reasonable assumptions predicated upon facts, and expert opinion supported by
5 facts. Argument, speculation, unsubstantiated opinion, inaccurate or erroneous evidence does not
6 constitute substantial evidence.

7 18. The County prejudicially abused its discretion by approving and adopting the
8 Mitigated Negative Declaration for the Project. The findings upon which the Mitigated Negative
9 Declaration is based are not supported by the evidence in the administrative record. The Mitigated
10 Negative Declaration is not supported by substantial evidence, the evidence does not support the
11 findings, and the findings do not support the Mitigated Negative Declaration. The Mitigated
12 Negative Declaration does not adequately or accurately describe or disclose the anticipated
13 environmental affects of the proposed Project. It does not satisfy the County's statutory obligation
14 as lead agency under CEQA and is inadequate to support approval of the Project or the issuance of
15 any permits or entitlements for the Project.

16 19. The County has a ministerial duty to comply with CEQA, to not make a decision
17 unless the decision is supported by findings that are supported by substantial evidence, and to not
18 approve a project unless and until the CEQA environmental review process has been fully and
19 adequately satisfied. In adopting the Mitigated Negative Declaration, the County failed to discharge
20 its ministerial duty.

21 20. Alpaugh is beneficially interested in this matter and has no adequate remedy at law.

22 WHEREFORE, Alpaugh requests that a Writ of Administrative Mandamus issue as
23 hereinafter prayed.

24 **SECOND CAUSE OF ACTION**
25 **(Writ of Mandate; Code of Civil Procedure § 1085)**

26 21. Paragraphs 1 through 20, inclusive, are incorporated herein.

27 22. The County has a ministerial duty to comply with CEQA by not approving any
28 project unless and until it has fully performed and adequately discharged its statutory duties. Here,

1 the County approved and adopted a Mitigated Negative Declaration that does not adequately or
2 accurately describe or disclose the anticipated environmental impacts of the proposed Project and
3 which is based on findings that are not supported by the evidence in the administrative record or by
4 any substantial evidence.

5 23. The County failed to discharge its ministerial duty despite its clear and present duty
6 to do so.

7 WHEREFORE, Alpaugh prays that a Writ of Mandate issue as hereinafter prayed.

8 **THIRD CAUSE OF ACTION**
9 **(Declaratory Relief; Code of Civil Procedure § 1060)**

10 24. Paragraphs 1 through 23, inclusive, are incorporated herein.

11 25. An actual controversy has arisen and now exists between Alpaugh and the County in
12 that Alpaugh believes the County has failed to adequately discharge its duties under CEQA and has
13 adopted a Mitigated Negative Declaration that does not accurately or completely describe the
14 proposed Project or disclose its anticipated environmental impacts but the County disagrees.

15 26. Alpaugh desires a judicial determination and declaration of the parties' respective
16 rights and duties, including a declaration of whether the County has failed to proceed in the manner
17 required by CEQA. Such a declaration is necessary and appropriate at this time.

18 WHEREFORE, Alpaugh prays for a declaratory judgment as hereinafter prayed.

19 **FOURTH CAUSE OF ACTION**
20 **(Injunctive Relief; Code of Civil Procedure § 527)**

21 27. Paragraphs 1 through 26, inclusive, are incorporated herein.

22 28. The County's adoption of the Mitigated Negative Declaration and approval of the
23 Project will cause Alpaugh to suffer immediate and irreparable injury for which Alpaugh has no
24 adequate remedy at law.

25 29. Unless and until the Mitigated Negative Declaration is set aside and the County is
26 commanded by order of this Court to fully and properly review, assess, and disclose the
27 anticipated environmental impacts of the proposed Project, Alpaugh will continue to suffer
28 irreparable injury.

1 WHEREFORE, Alpaugh prays for relief as follows:

2 **PRAYER FOR RELIEF**

3 1. That this Court enter Judgment for Alpaugh on the First Cause of Action and issue a
4 Writ of Administrative Mandamus commanding the County to set aside the Mitigated Negative
5 Declaration and conduct a proper, complete, and adequate environmental assessment of the
6 proposed Project that fully describes and discloses all anticipated environmental impacts of the
7 Project and complies with CEQA;

8 2. That this Court enter Judgment for Alpaugh on the Second Cause of Action and issue
9 a Writ of Mandate commanding the County perform an environmental review of the proposed
10 Project that complies with CEQA.

11 3. That this Court enter a Declaratory Judgment for Alpaugh on the Third Cause that,
12 in adopting the Mitigated Negative Declaration, the County failed to proceed in the manner required
13 by law and failed to discharge its duties under CEQA.

14 4. That this Court enter a preliminary injunction and permanent injunction prohibiting
15 the County from issuing any permits or entitlements based on or derived from its erroneous adoption
16 of the Mitigated Negative Declaration and approval of the Project.

17 5. That this Court award Alpaugh its reasonable attorneys' fees pursuant to Code of
18 Civil Procedure section 1021.5 for conferring a significant benefit on the general environment and
19 the public and the residents of Alpaugh.

20 6. For costs of suit.

21 7. For any and all other legal or equitable relief that the Court deems just and proper.

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23 Dated: September 4, 2020

LAW OFFICES OF MARK A. WASSER

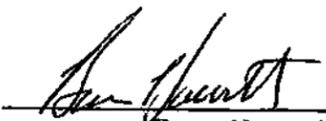
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25 By: 
26 Mark A. Wasser
27 Attorneys for Plaintiff/ Petitioner
28 Alpaugh Irrigation District

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VERIFICATION

I, Bruce Howarth, am the General Manager of Plaintiff/Petitioner Alpaugh Irrigation District and I am authorized to verify this Petition and Complaint for and on behalf of Alpaugh. I have read the foregoing Petition and Complaint and know its contents are true and correct of my own personal knowledge.

I hereby certify and declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 4, 2020 in Tulare, California.



Bruce Howarth