

1 BRETT S. JOLLEY (SBN: 210072)
2 MEGAN K. HALL (SBN: 286619)
3 SHORE, McKINLEY & CONGER, LLP
4 3031 W. March Lane, Suite 230
5 Stockton, California 95219
6 Telephone: (209) 477-8171
7 Email: bjolley@smcslaw.com
8 mhall@smcslaw.com

**[EXEMPT FROM FILING FEES
UNDER GOV. CODE § 6103]**

9 Attorneys for Petitioners COUNTY OF SAN JOAQUIN,
10 COUNTY OF CONTRA COSTA,
11 CONTRA COSTA COUNTY WATER AGENCY, and
12 CENTRAL DELTA WATER AGENCY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN JOAQUIN

15 COUNTY OF SAN JOAQUIN, CENTRAL
16 DELTA WATER AGENCY, COUNTY OF
17 CONTRA COSTA, CONTRA COSTA
18 COUNTY WATER AGENCY, FOOD &
19 WATER WATCH, and PLANNING AND
20 CONSERVATION LEAGUE,

21 Petitioners,

22 vs.

23 METROPOLITAN WATER DISTRICT OF
24 SOUTHERN CALIFORNIA; and DOES 1
25 through 100,

26 Respondents,

27 DELTA WETLANDS PROPERTIES,
28 KLMLP 2, LLC, KLMLP, L.P., ZURICH
AMERICAN CORPORATION,
SEMITROPIC WATER STORAGE
DISTRICT, RECLAMATION DISTRICT
756, RECLAMATION DISTRICT 2025,
RECLAMATION DISTRICT 2026,
RECLAMATION DISTRICT 2028 ; and
DOES 100 through 200,

Real Parties in Interest.

Case No.:

**PETITION FOR WRIT OF MANDATE
(CCP §§ 1085 and 1094.5; Pub. Res. C. §§
21168 and 21168.5)**

*CEQA action subject to preference over all
other civil actions per Public Resources Code
§ 21167.1*

[additional counsel for parties appear on the following page]

1 J. MARK MYLES, County Counsel (SBN: 200823)
2 OFFICE OF THE COUNTY COUNSEL
3 44 N. San Joaquin Street, Suite 679
4 Stockton, California 95202
5 Telephone: (209) 468-2980
6 Email: jmyles@sjgov.org

7 Attorneys for Petitioner COUNTY OF SAN JOAQUIN

8 SHARON L. ANDERSON, County Counsel (SBN 94814)
9 THOMAS L. GEIGER, Assistant County Counsel (SBN 199729)
10 STEPHEN M. SIPTROTH, Deputy County Counsel (SBN 252792)
11 Contra Costa County
12 651 Pine St., 9th Floor
13 Martinez, CA 94553
14 Telephone: (925) 335-1800
15 Facsimile: (925) 646-1078
16 Email: Stephen.Siptroth@cc.cccounty.us

17 Attorneys for Petitioners COUNTY OF CONTRA COSTA and
18 CONTRA COSTA COUNTY WATER AGENCY

19 DANTE JOHN NOMELLINI (SBN: 040992)
20 DANIEL A. MCDANIEL (SBN: 77363)
21 DANTE JOHN NOMELLINI, JR. (SBN: 186072)
22 NOMELLINI, GRILLI & McDANIEL
23 PROFESSIONAL LAW CORPORATIONS
24 P.O. Box 1461
25 Stockton, California 95201-1461
26 Telephone: (209) 465-5883
27 Facsimile: (209) 465-3956
28 Email: ngmplcs@pacbell.net

Attorneys for Petitioner CENTRAL DELTA WATER AGENCY

ANTONIO ROSSMANN (SBN: 51471)
ROGER B. MOORE (SBN: 159992)
ROSSMANN AND MOORE, LLP
2014 Shattuck Avenue
Berkeley, California 94704
Telephone: (510) 548-1401
Fax: (510) 548-1402
Email: ar@landwater.com
rbm@landwater.com

Attorneys for Petitioners
FOOD & WATER WATCH and
PLANNING AND CONSERVATION LEAGUE

1 **INTRODUCTION**

2 1. Petitioners COUNTY OF SAN JOAQUIN (“San Joaquin County”), COUNTY
3 OF CONTRA COSTA (“Contra Costa County”), CONTRA COSTA COUNTY WATER
4 AGENCY (“CCC WATER AGENCY”), CENTRAL DELTA WATER AGENCY (“CDWA”),
5 FOOD & WATER WATCH (“FWW”), and PLANNING AND CONSERVATION LEAGUE
6 (“PCL”), collectively “Petitioners,” respectfully petition this Court for a writ of mandate
7 pursuant to Code of Civil Procedure section 1085 or, in the alternative, section 1094.5, ordering
8 respondent METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“MWD”
9 or “Respondent”) to rescind its March 8, 2016 decision to purchase 20,369.80± acres of real
10 property (the “Project”) located in the San Joaquin Delta (the “Property”) from real party in
11 interest Delta Wetlands Properties (“Delta Wetlands”), including five islands and tracts (Chippis,
12 Bouldin, and Bacon Islands, and Webb and Holland Tracts – the five islands and tracts are
13 sometimes herein referred to as the islands). MWD has identified Bouldin and Bacon Islands
14 within the proposed path of the State of California’s unapproved tunnel construction project
15 (“California Water Fix”) undergoing separate environmental review, and promoted its ownership
16 of these islands to facilitate tunnel construction. MWD claims the Project is exempt from
17 CEQA. A writ of mandate, stay, and preliminary and permanent injunctions are necessary to set
18 aside and rescind MWD’s actions, which do not satisfy the minimum requirements of the
19 California Environmental Quality Act (“CEQA”). Before closing on these purchases and
20 proceeding with the Project, if at all, MWD must fully comply with CEQA, including preparing
21 an initial study and environmental impact report (“EIR”). The Project commits MWD to a
22 definite course of action that will result in significant physical changes in and environmental
23 impacts to the San Joaquin Delta, and risks adverse impacts for residents and ratepayers
24 throughout the state. By this Petition, Petitioners represent the following:

25 **PARTIES**

26 2. Petitioner COUNTY OF SAN JOAQUIN (“San Joaquin County”) is, and at all
27 times mentioned herein was, a political subdivision of the State of California. San Joaquin
28

1 County is vitally and beneficially interested in the decision made by the Respondent that will
2 affect the San Joaquin Delta. Portions of the Property, identified as Bacon Island and Bouldin
3 Island, are located entirely within San Joaquin County’s jurisdictional boundaries. San Joaquin
4 County’s interests, as well as the interests of the residents, landowners, and local districts within
5 its boundaries, will be directly and indirectly impacted by the Project's adverse environmental
6 impacts.

7 3. Petitioner COUNTY OF CONTRA COSTA (“Contra Costa County”) is, and at
8 all times mentioned herein was, a political subdivision of the State of California. Contra Costa
9 County is vitally and beneficially interested in the decisions made by the Respondent that will
10 affect the San Joaquin Delta. A portion of the Property, identified as Webb Tract and Holland
11 Tract, is located within Contra Costa County’s jurisdictional boundaries. Contra Costa County’s
12 interests, as well as the interests of the residents, landowners, and local districts within its
13 boundaries, will be directly and indirectly impacted by the Project's adverse environmental
14 impacts.

15 4. Petitioner CONTRA COSTA COUNTY WATER AGENCY (“CCC Water
16 Agency”) is, and at all times mentioned herein was, a body politic and corporate organized and
17 existing under the Contra Costa County Water Agency Act (Stats. 1957, ch. 518, West’s Wat.
18 Code App., Ch. 80). CCC Water Agency is vitally and beneficially interested in the decisions
19 made by the Respondent that will affect the San Joaquin Delta, and will affect water quality and
20 beneficial uses of water within CCC Water Agency’s jurisdiction. A portion of the Property,
21 identified as Webb Tract and Holland Tract, is located within CCC Water Agency’s
22 jurisdictional boundaries. CCC Water Agency is empowered to do all things necessary to
23 ensure the availability of water for beneficial uses within the agency’s jurisdiction, including but
24 not limited to preventing waste, salinity intrusion, and interference of diminution of the natural
25 flow of rivers of streams within the agency’s jurisdiction. (West’s Wat. Code Appen., § 80-
26 11(2), (5).) CCC Water Agency is authorized to bring this lawsuit to protect “the ownership, use
27 or supply of water, water rights or water service within or without the agency which may be used
28

1 or useful for any purpose within the agency.” (West’s Wat. Code Appen.. § 80-11(5).) CCC
2 Water Agency’s special statutory interests will be directly and indirectly impacted by the
3 Project's adverse environmental impacts.

4 5. Petitioner CENTRAL DELTA WATER AGENCY ("CDWA") is, and at all times
5 mentioned herein was, a political subdivision of the State of California created by the California
6 Legislature under the Central Delta Water Agency Act, chapter 1133 of the statutes of 1973, by
7 the provisions of which the CDWA came into existence in January of 1974. The CDWA
8 encompasses approximately 120,000 acres within the western portion of San Joaquin County.
9 All of such area is within the Sacramento-San Joaquin Delta as defined in California Water Code
10 section 12220. The lands within the CDWA’s boundaries are primarily devoted to agriculture
11 but also serve numerous other uses including recreational, wildlife habitat, open space,
12 residential, commercial, and institutional uses. Bacon Island and Bouldin Island are located
13 entirely within the boundaries of the CDWA and Webb Tract and Holland Tract lie immediately
14 west of the CDWA's western boundary line. The CDWA is empowered to “sue and be sued”
15 and to take all reasonable and lawful actions that have for their general purpose either (1) to
16 protect the water supply of the land within the agency against intrusion of ocean salinity; and/or
17 (2) to assure the lands within the agency a dependable supply of water of suitable quality
18 sufficient to meet present and future needs. (See Wat. Code App., §§ 117-4.3, subd. (b) & 117-
19 4.1, subd. (a), respectively.) The CDWA is also empowered to assist landowners and local
20 districts within the agency in reclamation and flood control matters. (See Wat. Code App., §
21 117-4.1, subd. (b).) CDWA's special statutory interests, as well as the interests of the
22 landowners and local districts within its boundaries, will be directly and indirectly impacted by
23 the Project's adverse environmental impacts.

24 6. Petitioner Food & Water Watch (“FWW”) is a non-profit advocacy organization
25 that champions clean water and healthy food for all Californians. With thousands of members
26 and supporters across the State, FWW opposes Metropolitan Water District's use of public funds
27 and risk of future liability for the purchase of the five Delta islands as a wasteful and
28

1 unnecessary expense that will produce financial harm to our members and cause environmental
2 harm to the San Francisco Bay Delta. FWW members throughout California as users of the Delta
3 environment, and FWW members in Southern California as consumers within MWD's rate base,
4 would be environmentally and economically harmed by MWD's proposed purchase. In
5 particular FWW and its members have been denied the opportunity, created and required by
6 CEQA, to learn of, participate in, and challenge MWD's purchase. FWW has asserted that
7 MWD's purchase of these islands is not in the public interest and would come at the
8 environmental and economic expense of more prudent local investments that would make
9 Southern California's water supply more reliable and environmentally responsible. FWW has
10 also asserted that this purchase facilitates and promotes the California Water Fix.

11
12 7. Petitioner Planning and Conservation League ("PCL") is a California-based, U.S.
13 Internal Revenue Code section 501(c)(4) nonprofit advocacy organization. PCL's mission is to
14 protect and restore California's natural environment and to promote and defend the public health
15 and safety of the people of California, through legislative, administrative, and judicial action.
16 PCL, now having completed 50 years of service to the California citizenry and environment, was
17 founded in 1965 and since then has advocated in all branches of California government for a
18 body of laws that remains at the forefront of environmental policy in the United States.

19 8. PCL's staff undertakes extensive research and works closely with legislators to
20 promote laws that protect and improve California's environment. PCL was the first organization
21 devoted to bettering Californians' quality of life through environmental legislation. One of the
22 organization's earliest accomplishments was the enactment in 1970 of the California
23 Environmental Quality Act ("CEQA"), which PCL helped draft and has continually supported
24 over the years, and which lies at the heart of this action. As a party and an *amicus curiae*, PCL—
25 on behalf of its twenty-seven institutional members and thousands of individual members—has
26 contributed to some of the leading cases interpreting CEQA's (and the parallel National
27 Environmental Policy Act (NEPA)'s provisions, such as *Planning and Conservation League v.*
28

1 *Department of Water Resources* (2000) 83 Cal.App.4th 892 (as petitioner); *Vineyard Area*
2 *Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (as
3 *amicus curiae*); and *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 507 (as
4 *amicus curiae*); *Planning and Conservation League v. State of California* (Alameda Super. Ct.,
5 June 3, 2013) No. RG 12626904 (invalidating 2011 AB 900 (as petitioner); *Planning and*
6 *Conservation League v. United States Bureau of Reclamation* (N.D. Cal. No. C-05003527 CW,
7 Jan. 27, 2006) (injunction against Bureau's SWP-CVP Intertie approval based on lack of EIS) (as
8 plaintiff).

9 9. Beyond the courtroom, PCL has published and updated *The Community Guide to*
10 *CEQA* and has sponsored CEQA workshops throughout the state. These workshops advise
11 interested individuals, governmental and non-governmental organizations, and locally elected
12 and appointed officials about CEQA's two-fold purpose of environmental protection and
13 informed self-government, including an aggrieved party's right to seek judicial review of a
14 public agency determination that fails to satisfy CEQA's substantive and procedural mandates.
15

16 10. PCL and its members will be aggrieved by the actions, more particularly
17 described in this petition, of respondent MWD. In particular, PCL as an institution and its
18 individual members have a great interest in CEQA's required proper environmental assessment
19 of MWD's proposed purchase from real party in interest Delta Wetlands Properties of the five
20 San Francisco Bay Delta islands that form the subject of this petition, and in the larger proposed
21 project, of which MWD's proposed purchase forms a part, of the State of California's
22 construction of tunnels through the Delta (the so-called California Water Fix). That interest
23 flows from PCL's and its members' roles as advocates for a healthy Delta environment, their
24 longtime participation in past and pending environmental reviews of the California Water Fix,
25 and their ability to become aware of and participate as members of the public in MWD's
26 proceedings related to the Delta islands.
27
28

1 11. In particular, at the MWD Board of Directors meeting of March 8, 2016, while
2 being present to object to a proposed MWD rate increase under agenda item "Public Hearing"
3 relating to suspension of tax rate limitations and adopting increased water rates and charges, a
4 FWW member protested against approval of a subsequent item on the agenda not noticed for
5 public hearing, item 8-6, "Authorize entering into an agreement to purchase property from Delta
6 Wetlands Properties in Contra Costa, San Joaquin, and Solano Counties." Notwithstanding the
7 lack of public hearing and opportunity for CEQA public comment on item 8-6, FWW prior to the
8 MWD board's approval of item 8-6 objected to the lack of a public hearing and the lack of a final
9 environmental impact report (EIR) in that proposed action.

10 12. Respondent METROPOLITAN WATER DISTRICT OF SOUTHERN
11 CALIFORNIA ("MWD") is, and at all times mentioned herein was, a public corporation
12 organized, existing and functioning under that certain statute known as "The Metropolitan Water
13 District Act" (Stats. 1927, ch. 429, and amendments thereto, codified at Water Code App., Ch.
14 109). MWD membership consists of 14 southern California cities and 12 southern California
15 water agencies. MWD approved purchasing the Property from Delta Wetlands to create
16 "security" of water supply to southern California and its stated proposed use of the Property
17 includes conversion of some lands to tidal and non-tidal wetlands by "removing levees, replacing
18 agricultural lands "with native tule vegetation to increase land elevations," controlling an
19 "emergency freshwater pathway... for freshwater suppliers to move fresh water supplies north-
20 to-south through the Delta" to deliver to southern California, and, finally, because "Bouldin and
21 Bacon Islands are along the path of the proposed [twin] tunnel pipeline alignment, ownership
22 could help assure timely construction" including providing access for the tunnels, depositing
23 tunnel boring material, constructing power lines, and staging equipment for construction of the
24 tunnels. The Property is not within the boundaries of MWD or any of its member agencies.
25 MWD has executed a purchase and sale agreement ("PSA") for the Property.

26 13. Respondent MWD has a duty to comply with state law requirements, including
27 CEQA, when approving the Project.
28

1 14. Real Party in Interest DELTA WETLANDS PROPERTIES (“Delta Wetlands”)
2 is an Illinois General Partnership doing business in the State of California. Delta Wetlands owns
3 the Property that MWD intends to purchase as part of the Project and is a party to the PSA.

4 15. Real Party in Interest KLMLP 2, LLC (“KLMLP 2, LLC”) is a Delaware limited
5 liability company and the Managing General Partner of Delta Wetlands. KLMLP 2, LLC is a
6 signatory to the PSA.

7 16. Real Party in Interest KLMLP, L.P. (“KLMLP, L.P.”) is a Delaware limited
8 partnership and the Managing Member of KLMLP 2, LLC. KLMLP, L.P. is a signatory to the
9 PSA.

10 17. Real Party in Interest Zurich American Corporation (“Zurich”) is a Delaware
11 corporation and the Managing General Partner of KLMLP, L.P. Zurich is a signatory to the
12 PSA.

13 18. Unless otherwise noted, the term “Delta Wetlands” includes KLMLP 2, LLC,
14 KLMLP, L.P., and Zurich.

15 19. Real Party in Interest Semitropic Water Storage District (“Semitropic”) is a
16 California water storage district located in Kern County, organized and existing under the laws
17 of the State of California. Semitropic is identified as a tenant of the Property in the PSA.

18 20. Real Party in Interest Reclamation District 756 (“RD 756”) is a reclamation
19 district organized and existing under the laws of the State of California. A portion of the
20 Property sits within the jurisdictional boundaries of RD 756.

21 21. Real Party in Interest Reclamation District 2025 (“RD 2025”) is a reclamation
22 district organized and existing under the laws of the State of California. A portion of the
23 Property sits within the jurisdictional boundaries of RD 2025.

24 22. Real Party in Interest Reclamation District 2026 (“RD 2026”) is a reclamation
25 district organized and existing under the laws of the State of California. A portion of the
26 Property sits within the jurisdictional boundaries of RD 2026.

27
28

1 23. Real Party in Interest Reclamation District 2028 (“RD 2028”) is a reclamation
2 district organized and existing under the laws of the State of California. A portion of the
3 Property sits within the jurisdictional boundaries of RD 2028.

4 24. Petitioners do not know the true names or capacities, whether individual,
5 corporate, or otherwise, of those Respondents and Real Parties in Interest sued herein as Does 1-
6 200. Petitioners are informed and believe and thereon allege that said Respondents and Real
7 Parties in Interest are in some manner responsible for the adoption of, imposition of, or admin-
8 istration of those actions of which Petitioners complain herein. Petitioners will amend this
9 Petition to set forth the true names and capacities of the fictitiously named Respondents and Real
10 Parties in Interest when such information has been ascertained.

11 25. Petitioners are informed and believe and based upon such information and belief
12 allege that each Respondent and Real Party in Interest is responsible in some manner for the
13 occurrences herein alleged.

14 **GENERAL ALLEGATIONS**

15 26. On or about March 8, 2016 the MWD Board of Directors met in closed session
16 and decided to purchase the Property from Delta Wetlands. MWD has publicly announced
17 several reasons for purchasing the Property which include, but are not limited to, creating
18 “security” of water supply to southern California, conversion of some lands to tidal and non-tidal
19 wetlands by “removing levees,” replacing agricultural lands “with native tule vegetation to
20 increase land elevations,” controlling an “emergency freshwater pathway... for freshwater
21 suppliers to move fresh water supplies north-to-south through the Delta” to deliver to southern
22 California, and, finally, because “Bouldin and Bacon Islands are along the path of the proposed
23 [twin] tunnel pipeline alignment, ownership could help assure timely construction” including
24 providing right-of-way for the Twin Tunnels project, staging equipment and supplies for
25 construction of the tunnels, and providing an area to deposit soil extracted from the earth for
26 tunnel boring activities.

27
28

1 27. The proposed Twin Tunnels project (known as California Water Fix, and in an
2 earlier and alternate version as the Bay Delta Conservation Project) remains under consideration
3 by the California Department of Water Resources (“DWR”) and the U.S. Bureau of Reclamation
4 (“BOR”), which agencies are in the process of preparing an Environmental Impact
5 Report/Environmental Impact Statement for the Twin Tunnels project. The Partially
6 Recirculated EIR/EIS for this project, circulated in 2015, identified dozens of “significant and
7 unavoidable” impacts, and elicited numerous comments, many of them highly critical, including
8 those of federal, state, and local agencies and those of petitioners in this action. Environmental
9 review of the Twin Tunnel project has not been completed and the Twin Tunnels project has not
10 been approved, either by the federal and state lead agencies or by MWD’s board of directors.
11 MWD’s ownership of the Property would facilitate and promote the construction of the
12 California Water Fix tunnels project, providing access for construction on the tunnel project
13 route and a potential basis to circumvent eminent domain proceedings, consider tunnel project
14 alternatives, or comply with CEQA. MWD is a proponent of the Water Fix project and would
15 benefit from development of the Water Fix project. During MWD’s March 8, 2016 meeting,
16 MWD consultant Curt Schmutte stated that in acquiring these islands MWD could “meet
17 mitigation requirements” for the California Water Fix. Stephen Arakawa, MWD’s manager of
18 Bay-Delta Initiatives, emphasized that the State is “completing the planning phase” of the
19 California Water Fix, and identified the Property as in the region of the pipeline tunnel alignment
20 for the Water Fix project. He also noted that portions of the Property “could be beneficial for
21 construction staging and access, temporary material placement and mitigation” for the Water Fix
22 project.

23 28. MWD filed a notice of exemption (“NOE”) for the Project in four locations: (1)
24 San Joaquin County Recorder’s Office (filed March 11, 2016), the Governor’s Office of
25 Planning and Research (filed March 14, 2016), Contra Costa County Recorder’s Office (filed
26 March 14, 2016), and the Solano County Recorder’s Office (filed March 16, 2015). The NOE
27
28

1 claimed the Project was exempt from CEQA based on the “common-sense exemption” of CEQA
2 Guideline §15061(b)(3) and the “class 25 exemption” arising from CEQA Guideline §15325.

3 29. Pursuant to the March 8, 2016 PSA, the purchase price of the Property is \$175
4 Million with escrow scheduled to close by June 8, 2016. Section 7.4(e) of the PSA requires
5 MWD to deliver a NOE to the Counties of San Joaquin, Contra Costa, and Solano.

6 30. Petitioners allege that the Project will, or in the alternative may, cause or
7 contribute to significant effects on the environment, including the Delta, and is not exempt from
8 CEQA.

9 31. Petitioners allege that exhaustion of administrative remedies is not a precursor to
10 challenging the Project and the Petitioners have satisfied any and all requirements of Pub. Res.
11 Code §21177. Prior to its decision on item 8-6, MWD did not schedule and hold a public
12 hearing on this Project, provided no public comment period on the Project’s environmental
13 impacts, and failed to provide notice to the public of its grounds for exemption or a fair
14 opportunity to address them. In the alternative, Petitioners allege that they sufficiently exhausted
15 any and all administrative remedies available concerning the Project. A member of FWW who
16 attended the March 8, 2016 MWD Board meeting on other matters objected to the Project during
17 that meeting, asserting that MWD had not satisfied CEQA in approving the Project, and
18 protested the absence of an EIR addressing Project impacts. That FWW member also noted the
19 Project’s purpose to facilitate the California Water Fix project, and observed that the latter
20 project lacked a final EIR and approval.

21 32. MWD agendized the Project for its March 8, 2016 meeting as follows: “8-6
22 Authorize entering into an agreement to purchase or to acquire an option to purchase property
23 from Delta Wetlands Properties in Contra Costa, San Joaquin, and Solano Counties. (RP&AM)
24 [Conference with real property negotiators; Property is approximately 20,369.80 acres, identified
25 as Contra Costa County Assessor's Parcel Nos. 026-060-003-6, 026-060-007-7, 026-060-008-5,
26 026-060-015-0, 026-060-016-8, 026-060-017-6, 026-060-018-4, 026-060-019-2, 026-070-001-8,
27 026-070-006-7, 026-070-010-9, 026-070-011-7, 026-070-012-5, 026-070-013-3, 026-080-004-0,
28

1 026-080-005-7, 026-080-006-5, 026-080-007-3, 026-080-008-1, 026-080-009-9; 023-040-026-9,
2 023-040-027-7, 023-050-001-9, 023-050-002-7, 023-070-011-4, 023-070-012-2, 023-080-010-4,
3 023-080-011-2, 023-090-001-1, 023-090-003-7, 023-090-004-5, 023-100-001-9, 023-100-002-7,
4 023-100-004-3, 023-100-007-6, 023-100-008-4; San Joaquin County Assessor's Parcel Nos. 129-
5 050-01, 129-050-02, 129-050-03, 129-050-04, 129-050-05, 129-050-06, 129-050-07, 129-050-
6 08, 129-050-09, 129-050-11, 129-050-12, 129-050-13, 129-050-14, 129-050-15, 129-050-16,
7 129-050-17, 129-050-18, 129-050-19, 129-050-24, 129-050-25, 129-050-26, 129-050-27, 129-
8 050-28, 129-050-52, 129-050-54, 129-050-55, 129-050-56, 129-050-60, 069-030-08, 069-030-
9 09, 069-030-10, 069-030-11, 069-030-19, 069-030-20, 069-030-21, 069-030-22, 069-030-23,
10 069-030-24, 069-030-26, 069-030-27, 069-030-28, 069-030-29, 069-030-30, 069-030-31, 069-
11 030-32, 069-030-33, 069-030-34, 069-030-35, 069-030-36, 069-030-37, 069-030-38, 069-030-
12 39, 069-030-42, 069-030-44, 069-100-01, 069-100-02, 069-100-03, 069-100-04, 069-100-05,
13 069-100-08, 069-100-09, 069-100-10, 069-100-11; and Solano County Assessor's Parcel No.
14 090-060-010; agency negotiators: Jeff Kightlinger, Stephen Arakawa, and Bryan Otake;
15 negotiating parties: Metropolitan and Delta Wetlands Properties; under negotiation: price and
16 terms; to be heard in closed session pursuant to Gov. Code Section 54956.8])” Although the
17 March 8, 2016 MWD Board agenda included two “Public Hearing” items, the Project was not
18 identified as a public hearing item. The MWD Board did not open the item for public comment
19 on the Project in item 8-6 on March 8, 2016. The March 8, 2016 MWD Board agenda did not
20 provide notice of MWD’s intent to treat the Project as exempt from CEQA or to otherwise
21 consider adopting a NOE.

22 33. Each Petitioner and its members, constituents, and agencies have direct and
23 beneficial interests in the MWD’s full compliance with CEQA and all other applicable laws
24 when considering the Project. Petitioners, their respective residents, property owners, and
25 members, and the public will be directly and substantially affected by the adverse environmental
26 impacts likely to result from the Project.

27
28

1 34. Because MWD has taken final action on the Project and filed the NOE,
2 Petitioners' claims are ripe for review.

3 35. Petitioners will comply with the requirements of Pub. Res. Code §21167.5 which
4 requires Petitioners to mail written notice of this action to MWD.

5 36. Petitioners will comply with Pub. Res. Code §21167.7 and Code of Civ. Proc.
6 §388 which requires Petitioners to notify the Attorney General of California of the
7 commencement of this action.

8 37. Petitioners do not have a plain, speedy, or adequate remedy in the ordinary course
9 of law.

10 38. A clear and significant benefit will be conferred upon the general public and
11 Petitioners by MWD fully satisfying the requirements of CEQA prior to approving the Project
12 and/acquiring the Property. In instituting this action, Petitioners seek to procure enforcement of
13 a mandatory duty. Petitioners seek to prevent unnecessary environmental harm resulting from
14 the Project and to ensure the environmental review process for the Project is transparent and
15 affords meaningful public participation. The public which Petitioners represent is vitally and
16 beneficially interested in assuring that the mandate of law is fully satisfied and fulfilled.
17 Granting the relief requested by Petitioners would confer a significant benefit on a large class of
18 persons, in that fundamental rules of law would be affected.

19 39. By the authority of Code of Civil Procedure sections 1085 and/or 1094.5, and
20 Public Resources Code sections 21168, 21168.5, and/or 21168.9, this Court has jurisdiction to
21 issue a writ of mandate to set aside and rescind MWD's decision to purchase the Property,
22 execution of the PSA, and related actions flowing therefrom.

23 40. Venue is proper in this Court because the causes of action alleged in this Petition
24 arise in San Joaquin County where a significant portion of the Project is located and where the
25 environmental effects of the Project will be experienced.

26
27
28

CAUSE OF ACTION
(Prejudicial Abuse of Discretion: Failure to Comply with CEQA)

1
2 41. Petitioners reallege and incorporate herein by reference the allegations contained
3 in Paragraphs 1 through 40, above.

4 42. MWD committed a prejudicial abuse of discretion and failed to proceed in the
5 manner required by law in filing the NOE and failing to prepare an initial study and/or
6 environmental impact report to identify, analyze, disclose, and mitigate significant
7 environmental impacts from the Project prior to approving the Project.

8 43. MWD exercised personal, discretionary judgment in deciding to approve the
9 Project despite the Project's potential to cause significant environmental effects that had not been
10 disclosed, evaluated, or mitigated. Such discretionary decision-making triggered MWD's
11 obligation to consider the Project's environmental effects as required by CEQA prior to
12 approving the Project.

13 44. MWD's decision to purchase the Property commits MWD to a definitive course
14 of action that will, or in the alternative may, result in significant physical environmental changes,
15 both direct and indirect.

16 45. CEQA defines a "Project" as "the whole of an action, which has a potential for
17 resulting in either a direct physical change in the environment, or a reasonably foreseeable
18 indirect physical change in the environment" which is undertaken by a governmental agency.
19 The whole of the action to be considered by MWD entails not just the purchase of the Property,
20 but the activities for which the Property is being purchased. Namely, creating "security" of
21 water supply to southern California, conversion of some lands to tidal and non-tidal wetlands by
22 "removing levees, replacing agricultural lands "with native tule vegetation to increase land
23 elevations," controlling an "emergency freshwater pathway... for freshwater suppliers to move
24 fresh water supplies north-to-south through the Delta" to deliver to southern California, and,
25 finally, because "Bouldin and Bacon Islands are along the path of the proposed [twin] tunnel
26 pipeline alignment, ownership could help assure timely construction" including providing access
27 for the tunnels and staging equipment for construction of the Twin Tunnels project.
28

1 46. The common-sense exemption to CEQA review (14 Cal. Code Regs., §
2 15061(b)(3)) applies only where it can be seen with certainty that a project will not have a
3 significant effect on the environment, and MWD failed to meet its evidentiary burden to invoke
4 that exception. Petitioners allege, and intend to present, substantial evidence demonstrating, that
5 the Project will cause significant direct and reasonably foreseeable indirect physical changes to
6 the environment in general, and the Delta in particular resulting from levee removal, cessation of
7 agricultural practices, planting vegetation not currently found on the Property, establishing new
8 pathways through the Property to divert water to the south of the Delta, staging and storing
9 construction equipment and supplies for the Twin Tunnels project, and other activities which
10 MWD has considered in deciding to purchase the Property.

11 47. The Class 25 exemption (14 Cal. Code Regs., § 15325) applies, on its face, to
12 acquisitions of land in order to “preserve open space, habitat, or historical resources.” MWD
13 does not intend to “preserve” the Property, but rather intends to significantly alter the Property in
14 a manner which will significantly affect the environment. “Exemption categories should not be
15 unreasonably expanded beyond their terms.” *McQueen v. Board of Directors* (1988) 202
16 Cal.App.3d 1136, 1148 (rejecting agency’s attempt to use Class 25 exemption for preserving
17 improved property and potentially expanding use of that property).

18 48. CEQA categorical exemptions, including the Class 25 exemption, are unavailable
19 where “there is a reasonable probability that the activity will have a significant effect on the
20 environment due to unusual circumstances.” Petitioner alleges, and intends to present substantial
21 evidence demonstrating, that the Project will cause significant direct and reasonably foreseeable
22 indirect physical changes to the environment in general, and the Delta in particular resulting
23 from levee removal, cessation of agricultural practices, planting vegetation not currently found
24 on the Property, establishing new pathways through the Property to divert water to the south of
25 the Delta, staging and storing construction equipment and supplies for the Twin Tunnels project,
26 and other activities which MWD has considered in deciding to purchase the Property.

27
28

1 on the Property, altering agricultural activities on the Property, planting vegetation not currently
2 found on the Property, establishing new freshwater pathways through the Property, staging and
3 storing construction equipment and supplies for the Twin Tunnels project on the Property, and
4 other activities which may alter the physical condition of the Property;

5 e. Commanding MWD to fully comply with CEQA in any subsequent action
6 taken to approve the Project or otherwise acquire any portion of the Property;

7 2. For a stay, temporary restraining order, and preliminary and permanent injunction
8 immediately restraining any and all Respondents and Real Parties in Interest from taking any
9 action to carry out the Project pending the outcome of this litigation;

10 3. That Petitioners be awarded the costs incurred in bringing this action, and
11 reasonable attorney fees pursuant to Code of Civil Procedure 1021.5, the "common benefit"
12 theory, Government Code section 800, or as otherwise provided by law or equity.

13 4. That the Court grant such other and further relief as may be equitable and just.

14 Respectfully submitted,

15
16 DATED: April 14, 2016

SHORE, MCKINLEY, & CONGER, LLP

17
18 By: 

19 BRETT S. JOLLEY
20 Attorneys for Petitioners
21 COUNTY OF SAN JOAQUIN,
22 COUNTY OF CONTRA COSTA,
23 CONTRA COSTA COUNTY WATER
24 AGENCY, and
25 CENTRAL DELTA WATER AGENCY

26 DATED: April 14, 2016

ROSSMANN AND MOORE, LLP

27
28 By: 

ROGER B. MOORE
Attorneys for Petitioners
FOOD & WATER WATCH and
PLANNING AND CONSERVATION
LEAGUE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I am one of the Attorneys of Record for Petitioners Food & Water Watch and Planning and Conservation League on whose behalf this Petition for Writ of Mandate is verified. I have read it and know the contents thereof. I am informed and believe the matters therein to be true and on that ground allege the matters stated therein are true. I make this Verification because the parties I represent are absent from the County of Alameda where I have my office.

I declare under penalty of perjury, under the laws of the state of California, that the foregoing is true and correct.

Executed at Berkeley, California on April 14, 2016.



ROGER B. MOORE