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SUPERIOR COURT OF CALIFORNIA

COUNTY OF KERN

KERN COUNTY WATER AGENCY,

Petitioner,

v.

GROUNDWATER BANKING JOINT  
 POWERS AUTHORITY; ROSEDALE-  
 RIO BRAVO WATER STORAGE  
 DISTRICT; IRVINE RANCH WATER  
 DISTRICT; and DOES 1-20, inclusive,

Respondents

DOES 21-100, inclusive,

Respondents,  
 Defendants, and Real  
 Parties in Interest

Case No. BCV-21-100223

Judge:

**KERN COUNTY WATER AGENCY'S  
 VERIFIED PETITION FOR WRIT OF  
 MANDATE FOR VIOLATION OF THE  
 CALIFORNIA ENVIRONMENTAL  
 QUALITY ACT**

(California Environmental Quality Act  
 ("CEQA"), Pub. Resources Code, § 21000, et  
 seq.; Code Civ. Proc., §§ 1085, 1094.5)

(Deemed Verified Pursuant to Code of Civil  
 Procedure, § 446)

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Petitioner KERN COUNTY WATER AGENCY (hereinafter, “Petitioner” or “KCWA”) alleges as follows:

### **INTRODUCTION**

1. KCWA seeks to ensure that the potential environmental impacts of the Kern Fan Groundwater Storage Project (“Project”) are properly disclosed and analyzed as required by the California Environmental Quality Act (“CEQA”).

2. The Project seeks to develop water recharge and recovery facilities in the Kern Fan area of western Kern County to, among other things, divert State Water Project (“SWP”) water and water from the Kern River to Orange County, California. On December 28, 2020, Respondent Groundwater Banking Joint Powers Authority (“JPA”) certified an environmental impact report (“EIR”) for, and approved, the Project as the lead agency under CEQA. Thereafter, Respondents Irvine Ranch Water District (“IRWD”) and Rosedale-Rio Bravo Water Storage District (“Rosedale”) made responsible agency findings for the Project under CEQA and further approved the Project. Yet, the EIR has many inadequacies and fails to comply with CEQA.

3. KCWA generally supports projects that seek to improve the water supply and reliability of Kern County water users, but environmental analysis is necessary to fully disclose the potential environmental impacts of the Project and to ensure that the Project will not result in potentially significant impacts to water users in Kern County. The need for environmental analysis is particularly acute here, as the Project has the potential to adversely impact the water resources and facilities upon which KCWA and other Kern County water users rely. For example, the Project may adversely impact KCWA’s ability to obtain and utilize SWP supplies that are currently delivered to the area, and as to which KCWA serves as the local contracting entity.

4. As alleged in detail below, the defects in both the procedure used to prepare the EIR and in the analysis contained within the EIR precluded informed decision-making and informed public participation—hallmarks of the CEQA process. The defects constitute procedural violations of CEQA that are violations of law, and demonstrate that the EIR’s factual conclusions are unsupported by substantial evidence. In short, the EIR does not comply with

1 CEQA's procedural or substantive mandates. Given that JPA, IRWD, and Rosedale (collectively,  
2 "Respondents") relied on a defective EIR when they issued their approvals for the Project  
3 ("Project Approvals"), KCWA requests that the Court issue a writ of mandate directing  
4 Respondents to decertify the EIR, to rescind and set aside the Project Approvals, and to complete  
5 environmental review of the Project as required by CEQA.

6 **THE PARTIES**

7 5. Petitioner KCWA is presently, and at all times relevant herein has been, a public  
8 agency created and existing pursuant to the Kern County Water Agency Act, Water Code  
9 Appendix chapter 99, and located in Kern County, California. KCWA entered into a long-term  
10 water supply contract with the State of California, acting through the Department of Water  
11 Resources ("DWR"), on November 15, 1963, for SWP water. KCWA serves as the local  
12 contracting entity in Kern County for the delivery of SWP water.

13 6. Petitioner is informed and believes that Respondent JPA is a joint powers authority  
14 organized and operating pursuant to Chapter 5 of Division 7 of Title 1 of the California  
15 Government Code. IRWD and Rosedale are the only members of the JPA, and they formed the  
16 JPA for the purported purpose of developing, constructing, and operating the Project.

17 7. Petitioner is informed and believes that Respondent IRWD is a California water  
18 district formed and existing under Section 34000, et seq. of the California Water Code. IRWD  
19 was formed in 1961 for the purpose of obtaining a water supply for municipal and irrigation uses.  
20 IRWD is a retail water agency serving over 100,000 water service connections within its service  
21 area, which includes all of the City of Irvine and portions of the cities of Tustin, Newport Beach,  
22 Costa Mesa, Orange, and Lake Forest, as well as unincorporated areas of Orange County.

23 8. Petitioner is informed and believes that Respondent Rosedale is presently, and at  
24 all times relevant hereto has been, a California Water Storage District formed and existing  
25 pursuant to the California Water Storage District Law, Water Code sections 39000 et seq.

26 9. The true names and capacities of the Respondents, Defendants, and Real Parties in  
27 Interest identified as DOES 1-100 are unknown to KCWA, and KCWA will amend this Petition  
28 to insert the true names and capacities of those parties when they are ascertained.

10. KCWA is informed and believes, and on that basis alleges, that at all times relevant to this action, each of the Respondents, Defendants, and Real Parties in Interest, including those fictitiously named, were agents of each of the other Respondents, Defendants, and Real Parties in Interest, and while acting within the course and scope of such agency, took part in either the acts or omissions alleged in this Petition.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction pursuant to Public Resources Code sections 21167, subdivision (a), 21168, and 21168.5, and Code of Civil Procedure sections 1060 et seq., 1085, and 1094.5.

12. Original venue is proper in this Court pursuant to Code of Civil Procedure sections 392, 393, 394, 395, and 860. Notably, the Project is located partially or wholly in Kern County.

### **STANDING**

13. KCWA and those whom KCWA serves will be directly and adversely affected by Respondents' actions in certifying the EIR and approving the Project, and KCWA is thus beneficially interested in the outcome of this action. KCWA has no plain, speedy, and adequate remedy in the ordinary course of law in that KCWA and those whom KCWA serves will suffer irreparable harm if the Project is implemented without proper environmental review. In addition, KCWA has standing to pursue this action to vindicate the rights of the public under CEQA and to ensure that proper environmental review under CEQA is completed.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14. KCWA has performed or is excused from performing any and all conditions precedent to filing the instant action and has exhausted any and all administrative remedies to the extent required by law, including as required by Public Resources Code section 21177. Notably, KCWA objected to the Project, and the grounds for this action were presented to Respondents orally or in writing during the public comment period provided under CEQA.

### **NOTICE OF PROCEEDING**

15. KCWA has complied with the requirements of Public Resources Code section 21167.5 in mailing a notice of commencement of this action to Respondents, prior to filing this

1 Petition. A copy of this notice and proof of service is attached as Exhibit “A” hereto and  
2 incorporated herein by this reference.

3 16. KCWA will comply with the requirements of Public Resources Code section  
4 21167.7 and Code of Civil Procedure section 388 by mailing a copy of this Petition to the  
5 Attorney General of the State of California.

6 **TIMELINESS**

7 17. This lawsuit has been commenced within the time limits imposed for this action  
8 under Public Resources Code section 21167, 21168, and/or 21168.5.

9 **FACTUAL BACKGROUND**

10 18. IRWD and Rosedale formed the JPA for the purpose of developing, constructing,  
11 and operating the Project. The Project aims to develop and operate groundwater banking  
12 facilities on approximately 1,300 acres of land. KCWA is informed and believes that the Project  
13 will have significant potential impacts on the environment. The Project involves the construction  
14 and operation of water conveyance, recharge, and recovery facilities, including, but not limited to,  
15 the following:

- 16 ■ The construction of up to 1,300 acres of recharge basin facilities in Kern County;
- 17 ■ The construction of up to 12 recovery wells in Kern County;
- 18 ■ The construction of water conveyance facilities, including a canal, pipelines, pump  
19 stations, and a new turnout at the California Aqueduct to convey water between  
20 the project facilities and the California Aqueduct.
- 21 ■ The establishment of an “Ecosystem Account” of water that would provide for the  
22 storage of up to 25,000 acre-feet of unallocated Article 21 water (explained in the  
23 next paragraph) in an account for DWR.

24 19. The Project is designed and intended to recharge and store up to 100,000 acre-feet  
25 of water. In particular, the Project has been designed to recharge, store, recover, deliver, and  
26 impact the following sources of water:

- 27 ■ SWP water, including Article 21 water (The SWP Water Supply Contract for each  
28 contractor includes a “Table A” allocation specifying the maximum amount of SWP

1 water that can be requested for delivery each year; Article 21 states that DWR may  
2 offer to sell and deliver surplus SWP water when its available supplies exceed Table A  
3 delivery requests from the SWP contractors, the Sacramento-San Joaquin Delta is in  
4 an excess flow condition under applicable regulatory standards, and SWP facilities  
5 have available conveyance capacity.);

- 6 ■ Central Valley Project (“CVP”) water, including Section 215 water (Section 215 of the  
7 Reclamation Reform Act authorizes the Bureau of Reclamation to provide temporary  
8 water service contracts for un-storable flood flows of the CVP that result from an  
9 unusually large water supply not otherwise storable for CVP purposes.);
- 10 ■ Water from the Kern River; and
- 11 ■ Water from other sources when available.

12 20. The JPA, as lead agency for the Project, prepared an EIR that should have—but  
13 failed to—analyze all of the potential significant environmental impacts of the Project.

14 21. JPA circulated its Draft EIR for a 45-day public review period from October 16,  
15 2020 to November 30, 2020. During the public review period for the Draft EIR, KCWA and  
16 others submitted comments noting defects in the EIR and urging the JPA to revise the EIR. To  
17 provide just a few examples, these comments include, but are not limited to, the following:

- 18 a. The EIR fails to adequately analyze the potential environmental impacts of the  
19 Project on SWP, SWP water allocations, and/or other SWP contractors. For  
20 example, the EIR provides that (1) unallocated Article 21 water will be stored in  
21 the Project for future ecosystem benefits; (2) DWR will determine when water  
22 from the “Ecosystem Account” would be needed for such ecosystem benefits; and  
23 (3) DWR will recover “Ecosystem Account” water through a 1:1 exchange with  
24 Rosedale, in which DWR will release water from Lake Oroville for ecosystem  
25 benefits. The DEIR, however, does not provide any analysis or discussion of how  
26 or when the determination to release water from Lake Oroville will occur. The  
27 EIR provides no analysis of these facts and their potential impacts to the SWP,  
28 SWP allocations, and/or SWP contractors. KCWA thus requested that the EIR be

1 amended to include the methodology, quantity of water, and frequency of release  
2 from Lake Oroville, and KCWA further requested that the EIR be amended to  
3 address the Project's potential impacts to the SWP, SWP allocations, and SWP  
4 contractors as a result of the pre-release water for pulse flow. The JPA failed to  
5 revise the EIR as needed to comply with CEQA.

6 b. The EIR fails to analyze impacts to existing turnouts in the California Aqueduct,  
7 including hydraulic impacts. The Project involves construction of conveyance  
8 facilities including a new turnout from the California Aqueduct. Construction of  
9 this turnout may significantly impact the operations of the Cross Valley Canal  
10 ("CVC"), which KCWA maintains and operates. Yet, the EIR fails to provide any  
11 analysis of potential hydraulic impacts or other impacts to the existing turnouts in  
12 the California Aqueduct, and it fails to offer any mitigation measures to mitigate  
13 impacts to the CVC, or other facilities that may be impacted by the Project.  
14 KCWA thus requested that the EIR be amended to include a hydraulic analysis and  
15 to analyze the potential impacts associated with an additional turnout. Again, the  
16 JPA failed to revise the EIR in response.

17 c. The EIR fails to identify and discuss potential limitations of in-lieu recovery  
18 operations. For example, the EIR provides that the Project would store up to  
19 seventy-five percent of unallocated Article 21 water for the benefit of Rosedale  
20 and IRWD, and the EIR specifies that Rosedale may use in-lieu recovery by  
21 exchange of Rosedale's allocation of KCWA SWP water to return water to IRWD  
22 previously banked in the Project; but, the EIR does not identify or discuss the  
23 implications or potential impacts of using SWP water for in-lieu recovery by  
24 exchange. Moreover, there is no analysis of Rosedale's existing return obligations  
25 and how SWP water used for the Project's anticipated in-lieu recovery, including  
26 return of DWR "Ecosystem Account" water by exchange, would impact or be  
27 impacted by its existing program obligations. KCWA thus urged the JPA to revise  
28 the EIR to address this concern, but the JPA paid KCWA little heed.

- 1 d. The Project seeks to obtain water from the SWP, the CVP, and the Kern River, but  
2 the EIR fails to provide analysis of the Project's potential impacts on these sources  
3 or on competing uses of water or water rights from these sources.
- 4 e. The EIR has an inadequate project description. The project description lacks  
5 necessary and important details regarding the Project, the sources of water for the  
6 Project, or the intended and expected use of water produced by the Project. For  
7 example, as noted above, the EIR repeatedly mentions an intent to construct a new  
8 turnout from the California Aqueduct, but the EIR lacks any details regarding this  
9 project component or any analysis regarding potential environmental impacts that  
10 may result from the construction of the turnout. Indeed, the EIR fails to even  
11 identify the precise location and boundaries of the turnout or of the Project and its  
12 facilities.
- 13 f. The EIR's project description focuses primarily on the physical components of the  
14 Project and the construction of those physical components, but in doing so, the  
15 EIR ignores the necessary analysis and disclosure relating to the water supplies for  
16 the Project, the use of water in connection with the Project, and the impacts  
17 associated with and arising out of the acquisition, use, and transfer of water for and  
18 from the Project.
- 19 g. The EIR fails to evaluate the significance of the effects of the Project as compared  
20 against a valid CEQA environmental baseline. The EIR fails to provide any  
21 information on baseline conditions in the Project area, or only provides a brief,  
22 general and incomplete description of baseline conditions. Moreover, the EIR  
23 does not set forth a clear or comprehensive description of baseline conditions  
24 concerning the areas serviced by IRWD and Rosedale or concerning the diversion  
25 and use of water from the SWP, CVP, or the Kern River.
- 26 h. The EIR fails to describe mitigation measures in sufficient detail to allow the  
27 public to understand whether measures will reduce the Project's impacts to levels  
28 that are less than significant. Furthermore, the EIR relies on unenforceable



mitigation measures, and it defers specific mitigation measures without adopting enforceable performance standards. Moreover, the EIR discussion of appropriate mitigation measures is necessarily deficient due to other related deficiencies in other aspects of the EIR, including an improper project description, failure to evaluate a reasonable range of alternatives, and improper analysis of the Project's impacts.

- i. The EIR fails to describe and evaluate a range of reasonable alternatives to the Project. Instead, the EIR identifies just one project alternative – the Antelope Valley Water Bank Alternative – and then dismisses this alternative on the grounds that the alternative is not located in Kern County. The identification of a single alternative that is not designed to accomplish most of the project objectives set forth in the EIR does not constitute the necessary “range” of reasonable alternatives required under CEQA.
- j. The EIR fails to adequately analyze the Project's cumulative impacts. Notably, the EIR does not support its cumulative impacts analysis with substantial evidence, but rather summarily dismisses a number of potential cumulative impacts without providing or referring to any supporting facts or data, and without providing any accurate or reasonable explanation of the impacts. Moreover, the EIR fails to consider entire categories of cumulative impacts.

22. On December 28, 2020, the JPA adopted a resolution certifying an EIR for the Project, adopting a Mitigation Monitoring and Reporting Program (“MMRP”) for the Project, and approving the Project. JPA filed its Notice of Determination for the Project with the Kern County Clerk on January 4, 2021.

23. On January 11, 2021, IRWD, as a responsible agency for the Project, adopted a resolution whereby it adopted written findings pursuant to CEQA, adopted a MMRP for the Project, approved the Project, and authorized the filing of a Notice of Determination for the Project. IRWD subsequently filed its Notice of Determination for the Project with the Kern County Clerk on or about January 12, 2021.

24. On January 12, 2021, Rosedale, as a responsible agency for the Project, adopted a resolution whereby it adopted written findings pursuant to CEQA, adopted a MMRP for the Project, approved the Project, and authorized the filing of a Notice of Determination. Rosedale subsequently filed its Notice of Determination for the Project with the Kern County Clerk on or about January 12, 2021.

### **FIRST CAUSE OF ACTION**

#### **(Petition for Writ of Mandate Pursuant to Code Civ. Proc., §§ 1085 and 1094.5 — Against All Respondents and DOES 1-100)**

25. KCWA incorporates by reference paragraphs 1 through 24, above, as though set forth in full herein.

26. “[T]he legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945, 963.) When complying with CEQA, a lead agency must proceed in the manner required by law, and its factual determinations must be supported by substantial evidence.

27. The defects in the EIR for the Project are pervasive and fundamental, so much so that they make informed decision-making and informed public participation impossible. The JPA’s certification of the EIR thus constitutes a procedural violation of CEQA and a failure to provide substantial evidence supporting the EIR’s factual conclusions, such that the EIR must be set aside. (See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512, 516.) The JPA’s violations of CEQA, and the defects of the EIR for the Project, include, but are not limited to, the following:

#### **Inconsistent and Ambiguous Project Description**

28. A stable and consistent project description is essential to achieving CEQA’s mandate. “An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) The JPA violated this mandate because the project description failed to describe the whole of the action with sufficient specificity to permit analysis of the Project’s full potential impacts.

29. The EIR's failure to provide a complete and unambiguous project description taints the entirety of its environmental analysis, as set forth in greater detail in the public comments submitted on the Draft EIR. For example, the EIR fails to identify the precise location and boundaries of the Project or its facilities. Moreover, the EIR repeatedly mentions an intent to construct a new turnout from the California Aqueduct, but the EIR lacks any details regarding this project component or any potential environmental impacts that may result from the construction of the turnout, making environmental review of the impacts resulting from the turnout inadequate and speculative. The project description is additionally incomplete as it lacks necessary and fundamental details regarding the sources of water for the Project, as well as the intended and expected use of the water produced by the Project. Significantly, the EIR's project description focuses primarily on the physical components of the Project and the construction of those physical components, but in doing so, the EIR ignores the necessary analysis and disclosure relating to the water supplies for the Project, the use of water in connection with the Project, and the impacts associated with and arising out of the acquisition, use, and transfer of water for and from the Project.

30. This incomplete project description has necessarily resulted in incomplete environmental analysis that fails to comply with the requirements of CEQA. As a result, the incomplete project description precluded public review and informed decision-making, and it prevented meaningful analysis of the Project's potential environmental impacts.

#### **Failure to Analyze the Project's Potentially Significant Impacts on the Environment**

31. JPA violated CEQA's mandate requiring a lead agency to analyze all of a project's potentially significant environmental impacts. As noted above, the EIR lacks a complete project description, and this itself resulted in JPA foregoing proper environmental analysis of many of the Project's components. Moreover, the EIR is plagued with cursory and incomplete analysis of the Project's potential impacts. This inadequate analysis is compounded, and in part the result of, the EIR's failure to set forth a valid CEQA environmental baseline against which the potential environmental impacts of the Project may be analyzed. Without a proper environmental baseline, JPA's significance determinations are arbitrary and are not supported by substantial evidence.

1           32.     As set forth in greater detail in Paragraph 21 above and in the public comments  
2 submitted on the Draft EIR, the EIR failed to identify and discuss, without limitation:

- 3           a.     The Project's potential impacts on SWP, SWP water allocations, and/or  
4                 other SWP contractors;  
5           b.     The Project's potential impacts to existing turnouts in the California  
6                 Aqueduct, including hydraulic impacts;  
7           c.     The Project's potential impacts resulting from its in-lieu recovery  
8                 operations;  
9           d.     The Project's potential impacts to the environment and to the SWP due to  
10                the pre-release of water from Lake Oroville for pulse flow;  
11           e.     The Project's potential impacts on the CVP, the Kern River, and on  
12                competing uses of water or water rights from these sources;  
13           f.     The Project's potential cumulative impacts.

14           33.     JPA's failure to analyze all of the Project's potentially significant impacts  
15 precluded informed decision-making and informed public comment.

16                   **Failure to Mitigate the Project's Potential Environmental Impacts**

17           34.     "The purpose of an environmental impact report is to identify the significant  
18 effects on the environment of a project, to identify alternatives to the project, and to indicate the  
19 manner in which those significant effects can be mitigated or avoided." (Pub. Resources Code,  
20 § 21002.1, subd. (a).) Accordingly, CEQA provides that each "public agency shall mitigate or  
21 avoid the significant effects on the environment of projects that it carries out or approves  
22 whenever it is feasible to do so." (Pub. Resources Code, § 21002.1, subd. (b).) To comply with  
23 this requirement, a lead agency must adopt mitigation measures that are fully enforceable, and it  
24 cannot improperly defer mitigation. (State CEQA Guidelines, § 15091, subd. (d).)

25           35.     JPA has failed to properly mitigate the potential impacts of the Project with  
26 enforceable mitigation measures, as set forth in greater detail in Paragraph 21 above and in the  
27 public comments submitted on the Draft EIR. Because JPA failed to properly analyze the  
28 Project's potential impacts as set forth herein, JPA has not formulated any mitigation measures

1 for a variety of the Project’s potential impacts, including, but not limited to, impacts concerning  
2 impacts to the SWP, CVC, and other impacts relating to hydrology and water deliveries.

### 3 **Failure to Consider a Reasonable Range of Alternatives**

4 36. An EIR’s discussion of feasible alternatives to a project that could avoid or  
5 substantially lessen a project’s environmental impacts comprises the “core of an EIR.” (*Citizens*  
6 *of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.) An EIR must therefore  
7 describe a reasonable range of alternatives to the proposed project, or to its location, that would  
8 feasibly attain most of the project’s basic objectives while reducing or avoiding any of its  
9 significant effects. (State CEQA Guidelines, § 15126.6.)

10 37. The EIR here fails to comply with CEQA’s requirements, as it does not describe a  
11 reasonable range of alternatives to the Project. Instead, the EIR identifies just one project  
12 alternative – the Antelope Valley Water Bank Alternative – and then dismisses this alternative on  
13 the grounds that the alternative is not located in Kern County. The identification of a single  
14 alternative that is not designed to accomplish most of the project objectives set forth in the EIR  
15 does not constitute the necessary “range” of reasonable alternatives required under CEQA.

### 16 **Inadequate Response to Comments**

17 38. State CEQA Guidelines section 15088 requires a lead agency to make a good faith,  
18 reasoned analysis in response to comments provided during the public comment period. JPA’s  
19 responses to comments, however, are cursory, conclusory, and factually unsupported. For  
20 example, KCWA and others commented that the EIR failed to properly analyze the Project’s  
21 potential environmental impacts relating to KCWA, the SWP, and SWP water allocations. Rather  
22 than revise the EIR or address the comments in good faith, JPA asserted a flat conclusion, without  
23 substantial evidence, that the DEIR’s analysis was sufficient. JPA provided similarly conclusory  
24 responses to numerous other comments. In doing so, JPA abused its discretion by failing to  
25 respond to comments in good faith and to support those responses with substantial evidence.

### 26 **Recirculation of the EIR is Required**

27 39. “A lead agency is required to recirculate an EIR when significant new information  
28 is added to the EIR after public notice is given of the availability of the draft EIR for public

1 review but ... before certification.” (State CEQA Guidelines, § 15088.5.) Here, while JPA’s  
2 response to comments were generally inadequate, its response to some comments resulted in the  
3 addition of significant new information to the EIR. Yet, despite this, JPA did not recirculate the  
4 EIR as required by law. This is a prejudicial abuse of discretion.

5 **No Substantial Evidence to Support Certification of the EIR or Approval of the Project**

6 40. It is axiomatic under CEQA that an EIR must be supported by substantial evidence  
7 to support its conclusions. (Code Civ. Proc., § 1094.5; Pub. Resources Code, § 21168.5.)

8 41. As set forth herein, substantial evidence does not support all of the EIR’s  
9 conclusions. Because the EIR did not include a proper project description, the EIR necessarily  
10 failed in its fundamental purpose of analyzing the potential environmental impacts of the entirety  
11 of the Project. Moreover, the EIR failed to provide any analysis regarding many potential  
12 environmental impacts of the Project, as set forth herein. Although the EIR ostensibly attempts to  
13 rely on “expert opinions,” those opinions do not constitute substantial evidence because they are  
14 speculative, erroneous, and factually unsupported. (See State CEQA Guidelines, § 15384 [the  
15 opinion of “experts” only constitutes substantial evidence where that opinion is not speculation, is  
16 accurate, and is supported by facts].) Given these defects, the record does not contain substantial  
17 evidence to support JPA’s certification of the EIR or approval of the Project.

18 **CEQA Findings that are Not Supported by Substantial Evidence**

19 42. Under CEQA, substantial evidence must support a lead agency and a responsible  
20 agency’s findings regarding potentially significant impacts, and a “brief explanation” linking the  
21 substantial evidence to the findings must be provided. (State CEQA Guidelines, §§ 15091,  
22 15096.) Specifically, the State CEQA Guidelines provide that “[n]o public agency shall approve  
23 or carry out a project for which an EIR has been certified which identifies one or more significant  
24 environmental effects of the project unless the public agency makes one or more written findings  
25 for each of those significant effects, accompanied by a brief explanation of the rationale for each  
26 findings.” (State CEQA Guidelines, § 15091.) The possible findings include that “changes or  
27 alterations have been required in, or incorporated into, the project which avoid or substantially  
28 lessen the significant environmental effect as identified in the final EIR.” (*Ibid.*)

43. While JPA did adopt lead agency findings, and IRWD and Rosedale did adopt responsible agency findings, these findings are based on a legally inadequate EIR and are therefore not supported by substantial evidence. In particular, Respondents found that changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effects as identified in the EIR as to the Project's potentially significant impacts relating to Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Noise and Vibration, and Transportation. Yet, Respondents failed to support these findings with substantial evidence. Notably, the mitigation measures relied upon by Respondents to reach these findings are vague, confusing, and unenforceable, and they often do not mitigate impacts at all but rather improperly defer mitigation.

#### **Prejudicial Abuse of Discretion**

44. As alleged above, JPA, IRWD, and Rosedale abused their discretion in numerous ways, such as by relying on a procedurally and substantively flawed EIR and by approving a project that has not yet undergone adequate CEQA review.

45. The inadequacies alleged above are prejudicial and require JPA, IRWD, and Rosedale's CEQA actions and their approvals of the Project to be rescinded until full environmental review in compliance with CEQA is conducted. Respondents' actions constitute a prejudicial abuse of discretion because they failed to proceed in the manner required by law and because their conclusions are not supported by substantial evidence. (Pub. Resources Code, § 21168.5.)

#### **PRAYER FOR RELIEF**

WHEREFORE, KCWA prays for relief as follows:

1. For interlocutory and permanent injunctive relief restraining JPA, IRWD, and Rosedale from taking any action to carry out the Project;

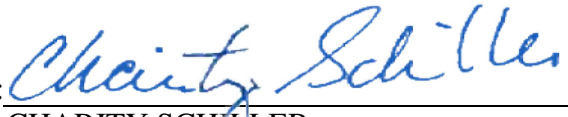
2. For a peremptory writ of mandate commanding that JPA, IRWD, and Rosedale (1) set aside and vacate their approvals relating to the Project, their certification of the EIR, and their CEQA lead agency findings (in the case of JPA) and/or CEQA responsible agency findings

(in the case of IRWD and Rosedale); and (2) refrain from granting any further approvals or permits for the Project unless and until Respondents comply fully with the requirements of CEQA;

3. For costs of suit;
4. For attorney fees pursuant to Code of Civil Procedure section 1021.5; and
5. For such other and further relief as the Court may deem just and proper.

Dated: February 2, 2021

BEST BEST & KRIEGER LLP

By:   
CHARITY SCHILLER  
ALI V. TEHRANI  
Attorneys for Petitioner  
Kern County Water Agency

**[Deemed verified as to Kern County Water Agency  
Pursuant to Code of Civil Procedure section 446]**



# Exhibit A

Indian Wells  
(760) 568-2611

Irvine  
(949) 263-2600

Los Angeles  
(213) 617-8100

Manhattan Beach  
(310) 643-8448

**Charity Schiller**  
(951) 826-8223  
charity.schiller@bbklaw.com



**BEST BEST & KRIEGER LLP**  
**ATTORNEYS AT LAW**

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Sacramento  
(916) 325-4000

San Diego  
(619) 525-1300

Walnut Creek  
(925) 977-3300

Washington, DC  
(202) 785-0600

February 1, 2021

**VIA FIRST CLASS MAIL AND EMAIL**

Groundwater Banking  
Joint Powers Authority  
Attn: Eric Averett  
P.O. Box 20820  
Bakersfield, CA 93390-0820  
[eaverett@rrbwsd.com](mailto:eaverett@rrbwsd.com)

Irvine Ranch Water District  
Attn: Jo Ann Corey  
15600 Sand Canyon Avenue  
Irvine, CA 92618  
[corey@irwd.com](mailto:corey@irwd.com)

Rosedale-Rio Bravo Water  
Storage District  
Attn: Eric Averett  
849 Allen Road  
Bakersfield, CA 93314  
[eaverett@rrbwsd.com](mailto:eaverett@rrbwsd.com)

**Re: Written Notice of Commencement of Action Under CEQA Regarding the  
Kern Fan Groundwater Storage Project**

Dear Mr. Averett and Ms. Corey:

PLEASE TAKE NOTICE that the Kern County Water Agency ("KCWA") intends to file a Petition for Writ of Mandate ("Petition") against the Groundwater Banking Joint Powers Authority ("JPA"), the Rosedale-Rio Bravo Water Storage District ("Rosedale"), and the Irvine Ranch Water District ("IRWD") for violations of the California Environmental Quality Act ("CEQA"). The Petition will challenge the certification of the environmental impact report ("EIR") (SCH No. 2020049019) for the Kern Fan Groundwater Storage Project ("Project") and the approvals relating to the Project on the grounds that, among other things, JPA, Rosedale, and IRWD abused their discretion and violated CEQA by certifying the EIR and approving the Project without complying with CEQA's procedural and substantive requirements.

The Petition will seek, inter alia, a writ of mandate ordering JPA, Rosedale, and IRWD to set aside and vacate their approvals relating to the Project, their certification of the EIR, and their CEQA lead agency findings (in the case of JPA) and CEQA responsible agency findings (in the case of IRWD and Rosedale). KCWA has hereby provided this Notice of Commencement of Action to JPA, Rosedale, and IRWD pursuant to Public Resources Code section 21167.5.

Sincerely,

A handwritten signature in blue ink that reads 'Charity Schiller'. The signature is written in a cursive, flowing style.

Charity Schiller  
of BEST BEST & KRIEGER LLP  
for Kern County Water Agency

**PROOF OF SERVICE**

At the time of service, I was over 18 years of age and not a party to this action. My business address is 3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, California 92502. On February 1, 2021, I served a copy of the following document(s):

**WRITTEN NOTICE OF COMMENCEMENT OF ACTION  
UNDER CEQA REGARDING THE KERN FAN  
GROUNDWATER STORAGE PROJECT**

- ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):
- ☐ Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- ☒ Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Riverside, California.

- ☐ **By personal service.** At \_\_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
- ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.
- ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.



2 **Only by electronic transmission.** Only by emailing the document(s) to the  
3 persons at the e-mail address(es). This is necessitated during the declared National  
4 Emergency and public health orders in multiple California counties due to the  
5 Coronavirus (COVID-19) pandemic because this office will be working remotely,  
6 not able to send physical mail as usual, and is therefore using only electronic mail.  
7 No electronic message or other indication that the transmission was unsuccessful  
8 was received within a reasonable time after the transmission. We will provide a  
9 physical copy, upon request only, when we return to the office at the conclusion of  
10 the national emergency.

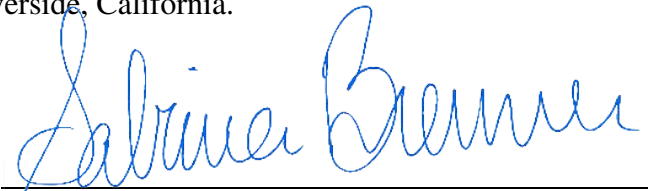
6 Eric Averett  
7 Groundwater Banking Joint Powers  
8 Authority  
9 P.O. Box 20820  
10 Bakersfield, CA 93390  
11 Email: [eaverett@rbwsd.com](mailto:eaverett@rbwsd.com)

Jo Anne Corey  
Irvine Ranch Water District  
15600 San Canyon Avenue  
Irvine, CA 92618  
Email: [corey@irwd.com](mailto:corey@irwd.com)

10 Eric Averett  
11 Rosedale-Rio Bravo Water Storage  
12 District  
13 849 Allen Road  
14 Bakersfield, CA 93314  
15 Email: [eaverett@rbwsd.com](mailto:eaverett@rbwsd.com)

14 I declare under penalty of perjury under the laws of the State of California that the above  
15 is true and correct.

16 Executed on February 1, 2021, at Riverside, California.

17 

20 Sabrina Brenner