

1 CHARITY SCHILLER, Bar No. 234291
2 Charity.Schiller@bbklaw.com
3 ALI V. TEHRANI, Bar No. 272388
4 Ali.Tehrani@bbklaw.com
5 Best Best & Krieger LLP
6 3390 University Avenue, 5th Floor
P.O. Box 1028
Riverside, California 92502
Telephone: (951) 686-1450
Facsimile: (951) 686-3083

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BY Munoz Alvarez, Sophia
DEPUTY

7 AMELIA T. MINABERRIGARAI, GENERAL COUNSEL,
Bar No. 192359
ameliam@kcwa.com
8 KERN COUNTY WATER AGENCY
3200 Rio Mirada Drive
9 Bakersfield, CA 93308
Telephone: (661) 634-1409

10 Attorneys for Petitioner
11 KERN COUNTY WATER AGENCY

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF KERN

15 KERN COUNTY WATER AGENCY,
16 Petitioner,

Case No. BCV-21-100223
Judge:

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

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

21 Respondents

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

23 DOES 21-100, inclusive,

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

24 Respondents,
25 Defendants, and Real
26 Parties in Interest

27

28

PETITION FOR WRIT OF MANDATE

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LAW OFFICES OF
BEST BEST & KRIEGER LLP
P.O. BOX 1028
3390 UNIVERSITY AVENUE, 5TH FLOOR
RIVERSIDE, CALIFORNIA 92502

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

3 **INTRODUCTION**

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

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

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

24 4. As alleged in detail below, the defects in both the procedure used to prepare the
25 EIR and in the analysis contained within the EIR precluded informed decision-making and
26 informed public participation—hallmarks of the CEQA process. The defects constitute
27 procedural violations of CEQA that are violations of law, and demonstrate that the EIR’s factual
28 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.

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

JURISDICTION AND VENUE

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

10 12. Original venue is proper in this Court pursuant to Code of Civil Procedure sections
11 392, 393, 394, 395, and 860. Notably, the Project is located partially or wholly in Kern County.

STANDING

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

NOTICE OF PROCEEDING

27 15. KCWA has complied with the requirements of Public Resources Code section
28 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.

- d. The Project seeks to obtain water from the SWP, the CVP, and the Kern River, but the EIR fails to provide analysis of the Project's potential impacts on these sources or on competing uses of water or water rights from these sources.
- e. The EIR has an inadequate project description. The project description lacks necessary and important details regarding the Project, the sources of water for the Project, or the intended and expected use of water produced by the Project. For example, as noted above, 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 analysis regarding potential environmental impacts that may result from the construction of the turnout. Indeed, the EIR fails to even identify the precise location and boundaries of the turnout or of the Project and its facilities.
- f. 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.
- g. The EIR fails to evaluate the significance of the effects of the Project as compared against a valid CEQA environmental baseline. The EIR fails to provide any information on baseline conditions in the Project area, or only provides a brief, general and incomplete description of baseline conditions. Moreover, the EIR does not set forth a clear or comprehensive description of baseline conditions concerning the areas serviced by IRWD and Rosedale or concerning the diversion and use of water from the SWP, CVP, or the Kern River.
- h. The EIR fails to describe mitigation measures in sufficient detail to allow the public to understand whether measures will reduce the Project's impacts to levels 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.

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

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

1 24. On January 12, 2021, Rosedale, as a responsible agency for the Project, adopted a
2 resolution whereby it adopted written findings pursuant to CEQA, adopted a MMRP for the
3 Project, approved the Project, and authorized the filing of a Notice of Determination. Rosedale
4 subsequently filed its Notice of Determination for the Project with the Kern County Clerk on or
5 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)**

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

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

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

Inconsistent and Ambiguous Project Description

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

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

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

20 **Failure to Analyze the Project’s Potentially Significant Impacts on the Environment**

21 31. JPA violated CEQA’s mandate requiring a lead agency to analyze all of a project’s
22 potentially significant environmental impacts. As noted above, the EIR lacks a complete project
23 description, and this itself resulted in JPA foregoing proper environmental analysis of many of the
24 Project’s components. Moreover, the EIR is plagued with cursory and incomplete analysis of the
25 Project’s potential impacts. This inadequate analysis is compounded, and in part the result of, the
26 EIR’s failure to set forth a valid CEQA environmental baseline against which the potential
27 environmental impacts of the Project may be analyzed. Without a proper environmental baseline,
28 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.

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.*)

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

Prejudicial Abuse of Discretion

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

16 45. The inadequacies alleged above are prejudicial and require JPA, IRWD, and
17 Rosedale's CEQA actions and their approvals of the Project to be rescinded until full
18 environmental review in compliance with CEQA is conducted. Respondents' actions constitute a
19 prejudicial abuse of discretion because they failed to proceed in the manner required by law and
20 because their conclusions are not supported by substantial evidence. (Pub. Resources Code,
21 § 21168.5.)

PRAYER FOR RELIEF

23 WHEREFORE, KCWA prays for relief as follows:

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

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

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

4 3. For costs of suit;

5 4. For attorney fees pursuant to Code of Civil Procedure section 1021.5; and

6 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
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



3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, CA 92502
Phone: (951) 686-1450 | Fax: (951) 686-3083 | www.bbklaw.com

Ontario
(909) 989-8584

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

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

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

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

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

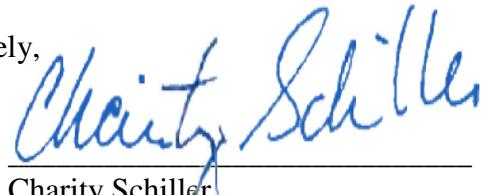
Re: Written Notice of Commencement of Action Under CEQA Regarding the Kern Fan Groundwater Storage Project

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,



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.



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

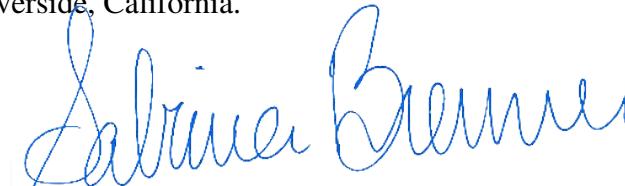
Eric Averett
Groundwater Banking Joint Powers
Authority
P.O. Box 20820
Bakersfield, CA 93390
Email: eaverett@rrbw.com

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

Eric Averett
Rosedale-Rio Bravo Water Storage
District
849 Allen Road
Bakersfield, CA 93314
Email: eaverett@rrbw.com

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

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



Sabrina Brenner