

1 NOSSAMAN LLP
2 ROBERT D. THORNTON (SBN 72934)
3 rthornton@nossaman.com
4 STEPHANIE N. CLARK (SBN 299657)
5 sclark@nossaman.com
6 SAMANTHA SAVONI (SBN 329243)
7 ssavoni@nossaman.com
8 18101 Von Karman Avenue, Suite 1800
9 Irvine, CA 92612
10 Telephone: 949.833.7800
11 Facsimile: 949.833.7878

**EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE § 6103**

7 THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP
8 STEVEN M. TORIGIANI (SBN 166773)
9 storigiani@youngwooldridge.com
10 BRETT STROUD (SBN 301777)
11 bstroud@youngwooldridge.com
12 1800 30th Street, 4th Floor
13 Bakersfield, CA 93301
14 Telephone: (661) 327-9661
15 Facsimile: (661) 327-0720

12 Attorneys for Plaintiff and Petitioner
13 KERN WATER BANK AUTHORITY

14 (Additional Party and Counsel on Next Page)

15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF KERN

18 KERN WATER BANK AUTHORITY,
19 WEST KERN WATER DISTRICT

20 Petitioners and Plaintiffs,
21 vs.

22 KERN LOCAL AGENCY FORMATION
23 COMMISSION, and DOES 1 through 100,
24 inclusive,

25 Respondent and Defendant,

26 ALL PERSONS INTERESTED IN THE
27 MATTER OF THE VALIDITY OF KERN
28 LOCAL AGENCY FORMATION
COMMISSION'S AUTHORIZATION AND
APPROVAL OF BUENA VISTA WATER
STORAGE DISTRICT'S APPLICATION FOR
A SPHERE OF INFLUENCE AMENDMENT
AND ANNEXATION OF LANDS,

Defendants, and

Case No: BCV-21-101310

**REVERSE VALIDATION ACTION;
VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Code Civ. Proc. §§ 860 et. seq., 1060, 1085,
1094.5; Pub. Resources Code §§ 21000 et seq.
(California Environmental Quality Act);
Gov't Code §§ 56103.

1 BUENA VISTA WATER STORAGE
2 DISTRICT, AND THE BUENA VISTA
3 WATER STORAGE DISTRICT
4 GROUNDWATER SUSTAINABILITY
5 AGENCY,

Real Parties in Interest.

6 **ADDITIONAL COUNSEL:**

7 KLEIN DeNATALE GOLDNER LLP

8 JOSEPH D. HUGHES (SBN 169375)

Email: jhughes@kleinlaw.com

9 JOHN V. KOMAR (SBN 169662)

Email: jkomar@kleinlaw.com

10 4550 California Avenue

11 Second Floor

Bakersfield, CA 93309

12 Telephone: 661-485-2100

13 Facsimile: 661-326-0418

14 Attorneys for Petitioner and Plaintiff

15 WEST KERN WATER DISTRICT
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Petitioners and Plaintiffs, the Kern Water Bank Authority and the West Kern Water
2 District (collectively, “Plaintiffs”), allege as follows in this verified Petition for Peremptory Writ
3 of Mandate and Complaint for Injunctive and Declaratory Relief (“Complaint”):

4 **I. INTRODUCTION.**

5 1. This is an action challenging the approvals by the Kern Local Agency Formation
6 Commission (“LAFCo”) of a sphere of influence amendment and annexation of lands (the
7 “Annexation Lands”) by the Buena Vista Water Storage District (“Buena Vista”). LAFCo’s
8 approval of the sphere of influence amendment and the annexation including adoption of
9 Resolution No. 21-03 concerning the sphere of influence amendment (Proceeding No. 1777,
10 Minute Book 66) and Resolution No. 21-04 concerning the annexation (Proceeding No. 1778,
11 Minute Book 66) on April 28, 2021 (collectively, the “LAFCo Approvals”) violate the California
12 Environmental Quality Act (“CEQA”).

13 2. The LAFCo Approvals, and the management of the Annexation Lands and the
14 groundwater beneath the Annexation Lands pursuant to the Sustainable Groundwater
15 Management Act, California Water Code § 10720 et seq. (“SGMA”), by Buena Vista or its
16 Groundwater Sustainability Agency (“GSA”), the Buena Vista Water Storage District GSA, are
17 part of the Palms Groundwater Recovery Project (“Palms Project” or “Project”) proposed by
18 Buena Vista, which Project is the subject of pending environmental review being conducted by
19 Buena Vista pursuant to CEQA. The Palms Project will have significant adverse environmental
20 impacts on Kern County’s groundwater quality and supply, on the Plaintiffs’ groundwater
21 resources, and on Plaintiffs’ property and water rights.

22 3. The Palms Project will mine high quality groundwater beneath the Annexation
23 Lands, blend it with low quality groundwater on existing Buena Vista lands, and then transfer the
24 blended water out of Kern County for use by third parties in Southern California.

25 4. The LAFCo Approvals violate the California Environmental Quality Act
26 (“CEQA”) because:

- 27 a. The LAFCo Approvals are part of a larger project subject to CEQA—the
28 Palms Project. Buena Vista concedes that the Palms Project is subject to

1 CEQA, and has prepared a draft environmental impact report (“EIR”), but
2 Buena Vista has not certified a Final EIR evaluating the environmental
3 effects of the Palms Project.

4 b. CEQA requires the certification of a Final EIR that complies with CEQA
5 before LAFCo or any other agency may approve the Palms Project. (Pub.
6 Resources Code, § 21151.)

7 c. LAFCo is a responsible agency regarding the Palms Project. As a
8 responsible agency, CEQA prohibits LAFCo from approving or issuing
9 the LAFCo Approvals without first (i) reviewing a certified Final EIR and
10 considering the environmental effects of the Palms Project,
11 (ii) determining that the Final EIR is adequate, (iii) adopting feasible
12 mitigation measures and alternatives, and (iv) making the findings
13 required by CEQA. (Cal. Code Regs., tit. 14, § 15096 [hereinafter,
14 “CEQA Guidelines”].)

15 d. The LAFCo Approvals are a step in the implementation of the Palms
16 Project. Implementation of the Palms Project cannot occur without (1) the
17 removal of the Annexation Lands from the jurisdiction of the Kern
18 Groundwater Authority Groundwater Sustainability Agency (“KGA
19 GSA”)—the agency with the responsibility for managing groundwater in
20 Kern County—to comply with SGMA, and (2) the modification of the
21 boundaries of the Buena Vista Water Storage District Groundwater
22 Sustainability Agency.

23 e. Under SGMA, the removal of the Annexation Lands from jurisdiction of
24 the KGA GSA, cannot occur unless LAFCo first approves the annexation.
25 The LAFCo Approvals are required before Buena Vista can obtain the
26 approval of the California Department of Water Resources (“DWR”) to
27 remove the Annexation Lands from the jurisdiction of the KGA GSA, and
28

1 to modify the boundaries of the Buena Vista Water Storage District
2 Groundwater Sustainability Agency. (Cal. Code Regs., tit. 23, § 343.2.)

3 f. Buena Vista's Annexation application makes it clear that the LAFCo
4 Approvals are part of Buena Vista's Palms Project. Buena Vista's own
5 annexation application and Resolution No. 4392 approved by Buena Vista
6 concedes that the LAFCo Approvals and groundwater management of the
7 Annexation Lands pursuant to SGMA are part of, and in furtherance of,
8 the Palms Project.

9 5. LAFCo's reliance on the exemptions from CEQA in sections 15060(c)(2) and
10 15061(b)(3) of the CEQA Guidelines violates CEQA. The exemption in section 15061(b)(3) of
11 the CEQA Guidelines is limited to narrow circumstances not applicable here. The exemption in
12 this section only applies where "it can be seen with certainty that there is **no possibility** that the
13 activity in question may have a significant effect on the environment." (CEQA Guidelines,
14 § 15061, subd. (b)(3), emphasis added.)

15 6. LAFCo's reliance on the exemptions in sections 15060(c)(2) and 15061(b)(3) of
16 the CEQA Guidelines violates CEQA and is a prejudicial abuse of discretion because: (a) The
17 LAFCo Approvals are part of the Palms Project, and/or are a step in the implementation of the
18 Palms Project that has significant environmental effects; and (b) the exemptions in sections
19 15060(c)(2) and 15061(b)(3) are inapplicable to an activity such as the Palms Project that has
20 any "possibility" of significant environmental effects. The LAFCo Approvals also do not qualify
21 for the exemption in Public Resources Code section 21080(b)(8) because the LAFCo Approvals
22 do not involve the establishment, modification, structuring, or approval of rates, tolls, fare or
23 other charge, and because the LAFCo Approvals are part of, and are a step in the approval of, a
24 project with significant environmental effects.

25 7. Because LAFCo failed to comply with CEQA, Plaintiffs petition this Court for a
26 writ of mandate under Code of Civ. Proc. sections 1085 and 1094.5, directing LAFCO to vacate
27 and set aside its approval of the amendment and annexation. In addition to its mandate action,
28 Plaintiffs bring a reverse validation action under Code of Civil Procedure section 860 et seq. (the

1 “Validation Law”) to declare the LAFCo Approvals invalid on the grounds that the LAFCo
2 Approvals violate CEQA.

3 **II. PARTIES.**

4 8. Plaintiff, KERN WATER BANK AUTHORITY (“KWBA”), is presently and has
5 been, at all times relevant hereto, a Joint Powers Authority organized on October 16, 1995 and
6 existing under the Joint Exercise of Powers Act, Cal. Gov’t Code § 6500 et seq. The member
7 agencies of KWBA are Dudley Ridge Water District, Kern County Water Agency, Semitropic
8 Water Storage District, Tejon-Castac Water District, Westside Mutual Water Company, and
9 Wheeler Ridge-Maricopa Water Storage District. The KWBA has for over 25 years owned and
10 operated the Kern Water Bank (“KWB”) on about 20,000 acres of land within the Kern River
11 Alluvial Fan area southwest of the City of Bakersfield, and has expended tens of millions of
12 dollars in the development and operation of the KWB. The KWB stores available surface water
13 in wet years using recharge ponds or basins located on the KWB, for recovery and use in dry
14 years when surface supplies are deficient. The member agencies of the KWBA rely on the
15 groundwater stored in the KWB to supply water for municipal and agriculture uses in Kern
16 County. The KWB lands are adjacent to the land that is the subject of the LAFCo Approvals.

17 9. The KWBA operates the KWB pursuant to the Kern Water Bank Habitat
18 Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”) approved by the
19 U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. The
20 HCP/NCCP provides 20,000 acres of habitat for a wide variety of wildlife including endangered
21 and threatened species. The Palms Project will have an adverse effect on the wildlife resources
22 of the KWB, and will result in injury to the KWBA’s environmental resources.

23 10. Plaintiff, WEST KERN WATER DISTRICT, is presently and has been, at all
24 times relevant hereto, a California County Water District organized and existing pursuant to the
25 California County Water District Law [Division 12 (commencing with section 30000) of the
26 California Water Code]. West Kern Water District owns and operates a groundwater banking
27 facility known as its North Recharge and Recovery Project (“NRRP”) on about 480 acres of land
28 within the Kern River Alluvial Fan area north of the city of Taft. West Kern Water District

1 stores available surface water in wet years using recharge ponds or basins within its NRRP, for
2 recovery and use in dry years when surface supplies are deficient. West Kern Water District
3 relies on the groundwater stored in the NRRP to supply water for municipal and industrial uses
4 in southwestern Kern County. The NRRP lands are adjacent to the land that is the subject of the
5 LAFCo Approvals.

6 11. Defendant, KERN LOCAL AGENCY FORMATION COMMISSION, is
7 presently and has been, at all times relevant hereto, a California Local Agency Formation
8 Commission organized and existing pursuant to provisions of the Government Code now found
9 in Section 56000 et seq. LAFCo's principal office is in Bakersfield, Kern County, California.

10 12. Plaintiffs are informed and believe, and on that basis allege, that Real Party in
11 Interest, BUENA VISTA WATER STORAGE DISTRICT, is presently and has been, at all times
12 relevant hereto, a California Water Storage District organized and existing pursuant to the
13 California Water Storage District Law [Division 14 (commencing with section 39000) of the
14 California Water Code] and a public agency for purposes of CEQA (Public Resources Code
15 section 21000 et seq.) and the Validation Law (Code of Civil Procedure section 860 et seq.), with
16 its principal office located in Buttonwillow, Kern County, California. Buena Vista's boundaries
17 are located exclusively within the boundaries of Kern County, California.

18 13. Plaintiffs are informed and believe, and on that basis allege, that: (a) Real Party
19 in Interest, BUENA VISTA WATER STORAGE DISTRICT GROUNDWATER
20 SUSTAINABILITY AGENCY ("Buena Vista GSA"), is presently and has been at all times
21 relevant hereto, a Groundwater Sustainability Agency organized and existing pursuant to the
22 Sustainable Groundwater Management Act ("SGMA"), Water Code section 10720 et. seq.; (b)
23 The Buena Vista GSA was created to manage groundwater for a portion of the Kern County
24 Subbasin (Basin Number 5-22.14, DWR Bulletin 118) within the San Joaquin Valley
25 Groundwater Basin and is the Groundwater Sustainability Agency within the existing lands of
26 the Buena Vista; and (c) the jurisdiction of the Buena Vista GSA does not include the
27 Annexation Lands.

1 14. Plaintiffs are ignorant of the names of other parties who may be defendants in this
2 action, and hereby names DOES 1 through 100 inclusive as Defendants and Respondents
3 pursuant to Code of Civil Procedure section 474. Plaintiffs will amend this Complaint to
4 designate the names of DOES 1 through 100 when the true names of DOES 1 through 100 are
5 discovered.

6 15. Defendants include "ALL PERSONS INTERESTED IN THE MATTER OF THE
7 VALIDITY OF KERN LOCAL AGENCY FORMATION COMMISSION'S
8 AUTHORIZATION AND APPROVAL OF BUENA VISTA WATER STORAGE DISTRICT'S
9 APPLICATION FOR A SPHERE OF INFLUENCE AMENDMENT AND ANNEXATION OF
10 LANDS, OR IN THE PROCEEDINGS LEADING UP TO, AND INCLUDING, THE LAFCO
11 APPROVALS."

12 **III. JURISDICTION AND VENUE.**

13 16. The Kern County Superior Court has jurisdiction over the matters alleged herein
14 pursuant to Code of Civil Procedure sections 860, 863, 1085, and 1094.5, Public Resources Code
15 sections 21168 and 21168.5, and Government Code section 56103.

16 17. This Court has the authority to issue a writ of mandate directing Respondents to
17 vacate and set aside the approval under Code of Civil Procedure sections 1085 and 1094.5.

18 18. Venue for the CEQA actions contained herein properly lies in the Kern County
19 Superior Court because Defendant LAFCo is located in Kern County and because Real Parties in
20 Interest Buena Vista and Buena Vista GSA are located in Kern County as well, making no other
21 location more appropriate or convenient.

22 19. Pursuant to Code of Civil Procedure sections 860 and 863, venue for the Reverse
23 Validation Action is proper in Kern County Superior Court because LAFCo's principal office is
24 located in Kern County, California.

25 20. For the purposes of Plaintiffs' Reverse Validation Action, jurisdiction over all
26 interested parties may be had by publication of summons pursuant to Government Code
27 section 6063 in a newspaper of general circulation designated by this Court. (Code Civ. Proc.
28

§ 861.) Plaintiffs shall publish the summons served on Defendant and Respondent pursuant to Code Civ. Proc. § 861.

IV. STANDING.

21. Plaintiffs have standing to assert the claims and matters raised in this Complaint. As described above, Plaintiffs are beneficially interested in this action and will incur injuries and damages as a result of the LAFCo Approvals. These injuries and damages include, but are not limited to: (a) reduction in the quality and quantity of groundwater available for reasonable and beneficial uses including municipal and agriculture uses; (b) adverse impacts on the sustainable management of the Plaintiffs' groundwater resources; (c) adverse impacts on other environmental resources of Plaintiffs' property, including the wildlife resources of the KWB and the West Kern Water District; (d) damage and injury to the property rights and water rights of Plaintiffs; and (e) loss of revenue and diminution of continued economic benefits dependent on the availability of the good quality groundwater that will be harmed by the LAFCo Approvals.

22. Plaintiffs are informed and believe, and on that basis allege, that the LAFCo Approvals and all actions in furtherance of the LAFCo Approvals, unless and until restrained and enjoined, will continue to violate Plaintiffs' rights and cause irreparable harm to Plaintiffs and others, and to the environment.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

23. Plaintiffs have performed any and all conditions precedent to the filing of this action by complying with all requirements of the Public Resources Code and exhausting all administrative remedies. Plaintiffs have exhausted all administrative remedies by submitting to Defendant written comments on Buena Vista's application for the sphere of influence amendment and annexation of lands related to the Project, in which Plaintiffs requested compliance with CEQA, including the completion of full and adequate environmental review. All issues raised in this Complaint were raised before Defendant by Plaintiffs, other members of the public, or public agencies prior to LAFCo's action on the LAFCo Approvals.

24. Plaintiffs have elected to prepare the record of proceedings in the above-captioned proceeding pursuant to Public Resources Code section 21167.6(b)(2).

1 25. This Complaint is timely filed in accordance with Public Resources Code
2 section 21167 and CEQA Guidelines section 15112.

3 **VI. NOTICES OF INITIATION OF COMPLAINT.**

4 26. In compliance with Public Resources Code section 21167.5, Plaintiffs served a
5 notice of the commencement of this action upon Defendant LAFCo and Real Parties in Interest
6 Buena Vista and the Buena Vista GSA indicating their intent to file this Complaint on or before
7 the filing of the Complaint. Proof of service of the notice of commencement, with the
8 notification, is attached hereto as **Exhibit “A.”**

9 27. In compliance with Public Resources Code section 21167.7, Plaintiff shall furnish
10 a copy of the Complaint to the California Attorney General.

11 **VII. STATUTE OF LIMITATIONS.**

12 28. This Complaint has been filed in accordance with all statutes of limitation,
13 including Code of Civil Procedure section 860 and Public Resources Code section 21167,
14 subdivision (d).

15 29. The Reverse Validation Action is timely pursuant to Code of Civil Procedure
16 sections 860 and 863 because the operative authorization and approval for the LAFCo Approvals
17 was not complete and final until filing by the Clerk of the County of Kern of the Notice of
18 Exemption for the Buena Vista Water Storage District Annexation No. 01 (Palms Annexation)
19 and Sphere of Influence Amendment on May 10, 2021.

20 **VIII. FACTUAL AND PROCEDURAL BACKGROUND.**

21 30. In June 2020, Buena Vista filed a notice of preparation (“NOP”) regarding the
22 preparation of a draft EIR evaluating the environmental effects of the Palms Project. The filing
23 of the NOP is evidence that Buena Vista determined that the Palms Project may have significant
24 environmental effects and therefore required the preparation of an EIR and that the approval of
25 the Palms Project by any agency is not exempt from CEQA. Plaintiff KWBA filed comments on
26 the NOP with Buena Vista.

27 31. In December 2020, Buena Vista published a notice of availability of the Draft EIR
28 for the Palms Project for public review and comment. Plaintiffs and other parties filed detailed

1 comments on the Draft EIR. The Draft EIR included the Annexation Lands and the construction
2 and operation of recovery wells and other elements integral to the Palms Project within the
3 description of the Palms Project.

4 32. The Draft EIR acknowledged that Buena Vista proposed to include the recovery
5 wells and other elements of the Palms Project on the Annexation Lands because of the poor
6 quality of the groundwater on the existing lands within the Buena Vista Water Storage District,
7 and that the Palms Project needed to construct and operate recovery wells within the Annexation
8 Lands to accomplish the purposes of the Palms Project.

9 33. The Draft EIR identified a primary purpose of the Palms Project is to recover
10 good quality groundwater beneath the Annexation Lands, blend the good quality groundwater
11 with the poor quality groundwater within existing Buena Vista lands so that the blended water
12 would comply with the water quality standards of the DWR, transfer the groundwater to the
13 California Aqueduct, and to sell the groundwater to third parties in Southern California.

14 34. The comments submitted by Plaintiffs and other parties including industrial or
15 municipal users on the Draft EIR documented that the Draft EIR did not comply with CEQA's
16 informational standards and otherwise violated CEQA for the following reasons, among others:

- 17 a. The Draft EIR presents a misleading evaluation of the direct, indirect, and
18 cumulative effects of the Project because the Draft EIR does not evaluate
19 the entire "project" as required by CEQA;
- 20 b. Buena Vista has engaged in a classic invalid "piecemealing" analysis of
21 Project effects. It first analyzed and evaluated recharge ponds using a
22 negative declaration. It is those recharge ponds that Buena Vista relies on
23 in this Project to supply the groundwater that would be extracted by this
24 Project using recovery wells. This separates the analysis of the
25 groundwater recharge ponds from the recovery wells, analyzing the two
26 components entirely separately in violation of CEQA;
- 27 c. The Project purpose includes attracting additional, yet-to-be defined
28 partners; mixing water to meet the DWR's water quality standards for

1 pump-in of non-State Water Project water, e.g., groundwater, into DWR's
2 California Aqueduct for the State Water Project; moving water through the
3 Aqueduct but does not identify the purposes for which the water is being
4 moved; and vaguely describes the sources of water recharge that the
5 Project will rely on;

6 d. The evaluation of the Project's water quality effects is misleading and
7 uninformative because it is based on incorrect and incomplete water
8 quality data, and there is no degradation or other adequate analysis of
9 cumulative effects of the pump-in of poorer quality Project groundwater
10 into the Aqueduct or whether Project pump-ins will impact other existing
11 or future reasonably foreseeable banking projects' ability to meet DWR's
12 standards;

13 e. Because the Project will not replenish groundwater by recharging water in
14 the lands outside the existing Buena Vista Water Storage District, it will
15 result in a significant and unreasonable reduction in groundwater storage
16 and groundwater quality within the Plaintiffs' lands;

17 f. The water quality impact analysis does not consider the environmental
18 impacts of removing better quality groundwater located outside the Buena
19 Vista Water Storage District and Buena Vista GSA and within another
20 GSA, without replenishment or replacement, or the impacts of blending
21 such mined water with the poorer quality groundwater that will be
22 recovered within the existing Buena Vista District where recharge occurs;

23 g. The Draft EIR does not evaluate a reasonable range of alternatives
24 including: alternative locations and configurations of the Project; an
25 alternative that limits use of the Project water to the Buena Vista Water
26 Storage District; and alternative Project operations to minimize potential
27 effects on groundwater, water quality, and biological resources;
28

- h. The Draft EIR fails to evaluate the significance of the effects of the Project as compared against valid CEQA existing condition and future baselines;
- i. The Draft EIR fails to include quantitative data on impacts to biological resources derived from protocol survey methodologies established by state and federal wildlife agencies;
- j. The Draft EIR does not include adequate mitigation and avoidance measures, and defers adequate definition of mitigation measures to the results of future studies;
- k. The Draft EIR does not disclose material assumptions in the groundwater model used for the Project which render the model fundamentally misleading and uninformative;
- l. The Draft EIR improperly constrains the cumulative impacts analysis to include only three other projects, and excludes the impacts of other past, present, and reasonably foreseeable future projects including, but not limited to, the Kern Fan Groundwater Storage Project and associated final EIR (State Clearinghouse #2020049019) approved and certified by the Groundwater Banking Joint Powers Authority on or about December 28, 2020; and
- m. The mining of good quality groundwater without replacement is not a reasonable use of water.

35. On October 2, 2020, Buena Vista applied to LAFCo to annex the Annexation Lands located outside of its boundaries and sphere of influence as part of the Palms Project. Buena Vista's own Resolution authorizing the filing of its annexation application clearly and unequivocally states that Buena Vista is seeking the annexation for a groundwater recovery project and management of those lands under SGMA. (Buena Vista's Resolution No. 4392, p. 1 of 3, ¶ 3.) Buena Vista's Resolution authorizing the annexation application states: "The property to be annexed is being developed for a groundwater recovery project" and "... the

1 reason for the proposed change in organization is that the District . . . desires to use the subject
2 property for groundwater recovery purposes and management of groundwater in accordance with
3 [SGMA]. . . . [T]he prospective groundwater recovery project will comply with . . . [CEQA] . . .
4 and all documents related to its completion shall be submitted to [LAFCo] by the District's
5 representative.” (*Ibid.*, p. 1 of 3, ¶¶ 3, 4.)

6 36. The Project proposes to mine high quality groundwater beneath the annexed land,
7 blend it with low quality groundwater on existing Buena Vista lands, and then transfer the
8 blended water out of Kern County for use by third parties in and out of Kern County. The good
9 quality groundwater that Buena Vista seeks to export represents a net loss of good quality
10 groundwater to the KGA GSA and the Plaintiffs that will not be replaced by the Palms Project.

11 This export operation will cause, among other impacts, significant groundwater impacts to
12 nearby pumpers, including the Plaintiffs and other banking projects and owners of agricultural
13 and domestic wells. These impacts have either not been evaluated or have been inadequately
14 evaluated by Buena Vista in the Draft EIR and no mitigation for such impacts has been
15 proposed.

16 37. Together, the fact that Buena Vista concluded that CEQA required the preparation
17 of an EIR regarding the effects of the Palms Project, and the comments submitted by Plaintiffs
18 on the Draft EIR, provide substantial evidence that the Project and the LAFCo Approvals may
19 have a significant effect on the environment. Plaintiffs' comments on the Draft EIR filed with
20 LAFCo, and Plaintiffs' other evidence provided to LAFCo, demonstrate that the LAFCo
21 Approvals violate CEQA, and that the narrow exemptions from CEQA under sections
22 15060(c)(2), and 15061(b)(3) of the CEQA Guidelines and Public Resources Code section
23 21080(b)(8) do not apply to the LAFCo Approvals.

24 38. As a responsible agency for the Project, LAFCo is prohibited from approving the
25 sphere of influence amendment and the annexation application prior to Buena Vista's
26 certification of a final EIR for the Project. (CEQA Guidelines, § 15096.)

27 39. In compelling the District to lawfully discharge its public duties, Plaintiffs are
28 acting in their capacity as a private attorney general, and in the interest and for the benefit of the

1 public. Plaintiffs are enforcing important rights affecting the public interest and conferring a
2 substantial benefit on the public, for which Plaintiffs are entitled to an award of attorney fees
3 under Code of Civil Procedure section 1021.5.

4 **FIRST CAUSE OF ACTION**

5 **Violation of the California Environmental Quality Act**

6 **(Public Resources Code § 21000 et seq.)**

7 40. Plaintiffs reallege and incorporate, as through fully set forth herein, each and
8 every allegation in paragraphs 1 through 39 of this Complaint.

9 41. In challenges under CEQA, the standard of review is “whether there is a
10 prejudicial abuse of discretion. Abuse of discretion is established if the agency has not
11 proceeded in a manner required by law or if the determination or decision is not supplied by
12 substantial evidence.” (Pub. Resources Code, § 21168.5).

13 42. CEQA requires that any local agency of the state “shall prepare, or cause to be
14 prepared by contract, and certify the completion of, an environmental impact report on any
15 project that they intend to carry out or approve which may have significant impact on the
16 environment.” (Pub. Resources Code, § 21151, subd. (a).)

17 43. CEQA defines a project as any “activity which may cause either a direct physical
18 change in the environment or a reasonably foreseeable indirect physical change in the
19 environment” (Pub. Resources Code, § 21065.)

20 44. The LAFCo Approvals constitute a project or projects under CEQA.

21 45. LAFCo’s authorization and approval of the LAFCo Approvals is a discretionary
22 action as defined by CEQA.

23 46. LAFCo’s actions to authorize and approve the application for a sphere of
24 influence amendment and annexation of lands by Buena Vista improperly relied on inapplicable
25 exemptions from CEQA.

26 47. LAFCo failed to consider the Project’s potential to cause foreseeable direct,
27 indirect, and cumulative impacts on the environment. These include, but are not limited to,
28 foreseeable direct and indirect impacts to groundwater resources and water quality.

48. Failure to conduct environmental review of the Project in light of these potential impacts is in violation of CEQA, including Public Resources Code sections 21080 and 21081.

49. A violation of CEQA that results in a failure to disclose potentially significant environmental impacts is prejudicial error. By not completing environmental review when the Project could have significant effects on the environment, LAFCo committed a prejudicial abuse of discretion as specified in the Public Resources Code section 21005, and the LAFCo Approvals should be voided and set aside.

50. Plaintiffs are informed and believe, and on that basis allege, that Plaintiffs lack an adequate remedy at law and that damages will not afford complete or adequate relief to Plaintiffs in that the Plaintiffs' groundwater and environmental resources adversely impacted by the Defendant's violations are unique, or because of the environmental degradation resulting from the LAFCo Approvals and the Palms Project described herein.

SECOND CAUSE OF ACTION

Reverse Validation Action

(Cal. Gov. Code §§ 53510, 53511, and Code Civ. Proc. § 860)

51. Plaintiffs reallege and incorporate, as through fully set forth herein, each and every allegation in paragraphs 1 through 50 of this Complaint.

52. Code of Civil Procedure section 863 provides that any interested person may bring an action to determine the validity of any matter of a public agency which under any other law that public agency is authorized to bring an action to determine the validity of pursuant to the Validation Law, Code of Civil Procedure section 860 et seq.

53. Government Code section 56103 is such a law, and it provides that “[a]n action to determine the validity of any change of organization, reorganization, or sphere of influence determination completed pursuant to this division shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.”

54. The amendment and annexation, and LAFCo's actions authorizing and approving them, and the proceedings leading up to and including said actions, are matters that are authorized to be determined valid or invalid in this reverse validation action pursuant to Code of

1 Civil Procedure sections 860 and 863, and Government Code section 56103. Plaintiffs bring this
2 action as a reverse validation action to determine the validity of said matters pursuant to
3 Government Code section 56103 and CEQA. However, in the alternative, if said matters cannot
4 be determined in a reverse validation action for some reason, then they shall be deemed pled as
5 declaratory relief actions or as mandate actions pursuant to Code of Civil Procedure section 1085
6 or 1094.5, as appropriate.

7 55. Plaintiffs bring this Reverse Validation Action pursuant to California law in order
8 to challenge the validity of the LAFCo Approvals based on the facts alleged in this Complaint.

9 56. An actual controversy has arisen and now exists between the parties in connection
10 with the LAFCo Approvals, and whether LAFCo complied with CEQA with regard to the
11 LAFCo Approvals.

12 57. The parties are in disagreement about such matters. Accordingly, a judicial
13 resolution of this controversy and a declaration of the parties' rights and duties with respect to the
14 same is necessary and appropriate.

15 **PRAYER**

16 WHEREOF, Plaintiffs pray for relief as follows:

17 1. As to all Causes of Action herein, that this Court enter judgment determining and
18 declaring whether the LAFCo Approvals described herein, comply with applicable law and are
19 null and void and subject to set aside.

20 2. On the First Cause of Action, that this Court enter judgment determining and
21 declaring that LAFCo failed to comply with CEQA and therefore the LAFCo Approvals and the
22 LAFCo determinations that the LAFCo Approvals are exempt from CEQA, including LAFCo's
23 Notice of Exemption, are invalid and null and void, and that this Court issue a peremptory writ
24 of mandate commanding LAFCo and Buena Vista to vacate, set aside the LAFCo Approvals
25 including the Notice of Exemption, and suspend all other authorizations and approvals by
26 Defendant LAFCo related to the Palms Project including, but not limited to, the LAFCo
27 Approvals, including Resolution No. 21-03, and Resolution No. 21-04 adopted by LAFCo, and
28

1 Resolution No. 4392 adopted by Buena Vista, and imposing other appropriate remedies under
2 CEQA.

3 3. On the Second Cause of Action, a determination that the LAFCo Approvals are
4 invalid and in violation of law, and vacating and setting aside the LAFCo Approvals including
5 said Resolution No. 21-03 and Resolution No. 21-04, and the Buena Vista Resolution No. 4392.

6 4. As to all Causes of Action, an injunction against all actions in furtherance of the
7 LAFCo Approvals and the Palms Project.


8 5. As to all Causes of Action, an award to Plaintiffs of attorneys' fees and costs of
9 suit, and other and further relief as the Court may deem proper in these circumstances.

10 Dated: June 9, 2021

NOSSAMAN LLP
Robert D. Thornton
Stephanie N. Clark
Samantha Savoni

13 Dated: June 9, 2021

THE LAW OFFICES OF YOUNG
WOOLDRIDGE, LLP
Steven M. Torigiani
Brett A. Stroud

16 By: 
Steven M. Torigiani
Brett A. Stroud

18 Attorneys for Plaintiff and Petitioner
19 KERN WATER BANK AUTHORITY

20 Dated: June 9, 2021

KLEIN DeNATALE GOLDNER LLP
Joseph D. Hughes
John V. Komar

22 By: 
Joseph D. Hughes
John V. Komar

24 Attorneys for Plaintiff and Petitioner
25 WEST KERN WATER DISTRICT

- 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

2

3
4
5
6
7

8
9

10

11
12

13

- 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

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

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

June 9, 2021

Kern LAFCo
Attn.: Blair Knox, Executive Officer
5300 Lennox Avenue, Ste. 303
Bakersfield, CA 93309
(661) 716-1076
Email: eo@kernlafco.org

Re: Notice of Commencement of Action by Kern Water Bank Authority and West Kern Water District in Connection with LAFCo's Approval of Buena Vista Water Storage District Sphere of Influence Amendment and Annexation

Dear Mr. Knox:

Pursuant to Public Resources Code section 21167.5, the Kern Water Bank Authority and the West Kern Water District (collectively, "Plaintiffs") hereby serve you with a written notice of the commencement of an action against the Kern Local Agency Formation Commission ("LAFCo"), and naming the Buena Vista Water Storage District, and the Buena Vista Water Storage District Groundwater Sustainability Agency (also known as the Buena Vista GSA) as Real Parties in Interest. The action will challenge the validity of approvals by LAFCo of a sphere of influence amendment and annexation of lands (collectively, the "LAFCo Approvals") by or with respect to the Buena Vista Water Storage District.

As you are aware, on May 10, 2021, the Clerk of the County of Kern filed a Notice of Exemption for the Buena Vista Water Storage District Annexation No. 01 ("Palms Annexation") and Sphere of Influence Amendment. Plaintiffs contend that LAFCo's reliance on the exemption from the California Environmental Quality Act ("CEQA") in sections 15060(c)(2), 15061(b)(3), and 21080(b)(8) of the Public Resources Code violates CEQA. Because LAFCo failed to comply with CEQA, Plaintiffs will petition the Kern County Superior Court for a writ of mandate under Code of Civil Procedure sections 1085 and 1094.5, directing LAFCo to vacate and set aside its approvals of the amendment and annexation. In addition to its mandate action, Plaintiffs will bring a reverse validation action under Code of Civil Procedure section 860 et seq. to declare the LAFCo Approvals invalid on the grounds that the LAFCo Approvals violate CEQA.

To the extent you have any questions or concerns with the issues raised herein, please do not hesitate to contact me.

Very truly yours,



Brett A. Stroud
THE LAW OFFICES OF YOUNG
WOOLDRIDGE, LLP

cc: Julien Parsons, Secretary
Buena Vista Water Storage District
BVWSD GSA
525 North Main Street
P.O. Box 756
Buttonwillow, CA 93206
Email: administrator@bvh2o.com

Tim Ashlock, Engineer-Manager
Buena Vista Water Storage District
BVWSD GSA
525 North Main Street
P. O. Box 756
Buttonwillow, CA 93206
Email: tim@bvh2o.com

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I, KRISTEN MOEN, declare: I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is 1800 30th Street, Fourth Floor, Bakersfield, CA 93301.

On June 9, 2021, I caused the above letter entitled **"Notice of Commencement of Action by Kern Water Bank Authority and West Kern Water District in Connection with LAFCo's Approval of Buena Vista Water Storage District Sphere of Influence Amendment and Annexation"** to be served by mail on

Kern LAFCo
Attn.: Blair Knox, Executive Officer
5300 Lennox Avenue, Ste. 303
Bakersfield, CA 93309

Julien Parsons, Secretary
Buena Vista Water Storage District
Buena Vista Water Storage District Groundwater Sustainability Agency
P.O. Box 756
Buttonwillow, CA 93206

Tim Ashlock, Engineer-Manager
Buena Vista Water Storage District
Buena Vista Water Storage District Groundwater Sustainability Agency
P. O. Box 756
Buttonwillow, CA 93206

by placing a true copy thereof enclosed in a sealed envelope addressed to the address above. I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of business.

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

Executed on June 9, 2021, at Bakersfield, California.



KRISTEN MOEN