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JOAQUIN MUNICIPAL UTILITY DISTRICT

**EXEMPT FROM FILING
FEE [GOV. CODE §6103]**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

SOUTHERN SAN JOAQUIN MUNICIPAL
UTILITY DISTRICT, a California Municipal
Utility District;

Petitioner,

v.

CITY OF DELANO, a general law city and
municipal corporation; and DOES 1 through
100, inclusive;

Respondents.

NIAGARA BOTTLING, LLC, a Delaware
limited liability company; and DOES 101
through 200, inclusive;

Real Parties in Interest

Case No. _____

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

([CEQA – Pub. Resources Code, §§ 21000 et
seq.; Code Civ. Proc., §§ 1085, 1094.5, 1060,
526.]

Petitioner and Plaintiff, Southern San Joaquin Municipal Utility District (“Petitioner” or “SSJMUD”) brings this Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”) and alleges as follows:

INTRODUCTION

1. This action is commenced pursuant to the California Environmental Quality Act, Public Resources Code sections 21000 et seq. (“CEQA”), and its implementing regulations in the California Code of Regulations, title 14, chapter 3, sections 15000 et seq. (“CEQA Guidelines”). This Petition challenges the approval, without adequate CEQA review, of the construction and operation of a water bottling plant in the City of Delano (“Project”).

PARTIES

2. Petitioner is a public entity formed and existing pursuant to the Municipal Utility District Act, Public Utilities Code sections 11501–14509. Petitioner’s boundaries, consisting of approximately 67,000 acres, are located exclusively within the County of Kern and include the City of Delano.

3. Petitioner is informed and believes, and thereon alleges, that Respondent City of Delano (“Respondent” or “Delano”) is a California city formed as a general law city. Respondent’s boundaries are exclusively within the County of Kern.

4. Petitioner is informed and believes, and thereon alleges, that Real Party in Interest Niagara Bottling, LLC (“Real Party” or “Niagara”) is a Delaware limited liability company doing business in the State of California.

5. Petitioner is unaware of the true names and capacities of the respondents sued herein as DOES 1-100, and therefore it sues such respondents by these fictitious names. Petitioner is informed and believes, and thereon alleges, that each of these respondents is a public agency subject to CEQA and has provided an approval to the Project without performing adequate CEQA review.

6. Petitioner is unaware of the true names and capacities of Real Parties in Interest, sued herein as DOES 101-200, and therefore sues such persons, entities, and organizations by these fictitious names. Petitioner is informed and believes that each of said DOES has an interest

1 in the Project or the matters alleged in this action. When their true identities and capacities have
2 been determined, Petitioner will amend this Petition, with leave of court if necessary, to insert
3 such identities and capacities.

4 **FACTUAL BACKGROUND**

5 **Background**

6 7. The City of Delano overlies a portion of the Kern County Subbasin (Basin No. 5-
7 022.14) (“Basin”), which has been designated by the Department of Water Resources (“DWR”)
8 as a high priority, critically overdrafted basin under the Sustainable Groundwater Management
9 Act (“SGMA”).

10 8. Petitioner is the exclusive Groundwater Sustainability Agency (“GSA”) for a
11 portion of the Basin, including the City of Delano.

12 9. As the exclusive GSA for its portion of the Basin, Petitioner is responsible for
13 implementing SGMA and sustainably managing the groundwater resources of that portion of the
14 Basin.

15 10. Petitioner and Respondent entered into a Memorandum of Understanding dated
16 February 10, 2017, which provided in part that Respondent would develop a groundwater
17 sustainability plan under SGMA that would cover lands within Respondent’s boundaries,
18 including the City of Delano.

19 11. The Basin is critically overdrafted, with an average annual groundwater overdraft
20 of approximately 324,326 acre-feet.

21 **Project Details**

22 12. Petitioner is informed and believes, and thereon alleges, that Niagara intends to
23 construct, or has already begun construction of, a water bottling plant in the City of Delano,
24 which is the Project being challenged in this CEQA petition.

25 13. Petitioner is informed and believes, and thereon alleges, that Niagara intends to
26 extract up to 1.6 million gallons of groundwater from the Basin per day, or up to 584 million
27 gallons per year (approximately 1792 acre-feet).

28 14. This water would be exported from the Basin, without replacement, thus

1 aggravating the groundwater overdraft of the Basin and contributing to undesirable results.

2 **CEQA REQUIREMENTS**

3 15. CEQA was enacted to “[e]nsure that the long-term protection of the environment
4 ... shall be the guiding criterion in public decisions.” (Pub. Resources Code, § 21001(d).)
5 CEQA’s environmental review process is intended to provide the public with assurances that “the
6 agency has, in fact, analyzed and considered the ecological implications of its actions.” (*Laurel*
7 *Heights Improvement Assn., supra*, (1988) 47 Cal.3d at 392 [quoting *No Oil, Inc. v. City of Los*
8 *Angeles* (1974) 13 Cal.3d 68, 86].) The function of the environmental review, then, is not merely
9 to result in informed decision making on the part of the agency, it is also to inform the public so
10 they can respond to an action with which they disagree. (*Id.*)

11 16. CEQA applies to all “discretionary projects proposed to be carried out or
12 approved by public agencies” unless expressly exempted. (Pub. Resources Code, § 21080, subd.
13 (a).)

14 17. For any non-exempt project, CEQA requires the preparation of either an
15 Environmental Impact Report (“EIR”) or a Negative Declaration (“ND”). ((Pub. Resources
16 Code, § 21080, subds. (c), (d).) An EIR is required if there is any fair argument that the project
17 may have a significant effect on the environment. (*Id.*; CEQA Guidelines § 15064, subd. (f)(1);
18 *No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68, 85; *County Sanitation Dist. No. 2 v.*
19 *County of Kern* (2005) 127 Cal.App.4th 1544, 1579.)

20 18. If only one public agency will approve a project, it must complete the
21 environmental review required by CEQA, including an Initial Study and the preparation of an
22 EIR or ND. If multiple agencies will provide approvals, one is designated as the “Lead Agency”
23 and is responsible for conducting that review. (See CEQA Guidelines, § 15050-53.)

24 19. Abuse of discretion under CEQA is established if the agency has not proceeded
25 in a manner required by law or if the agency's determination or decision is not supported by
26 substantial evidence. (Pub. Resources Code, §§ 21168, 21168.5.)

27 **CEQA VIOLATIONS**

28 20. Petitioner is informed and believes, and thereon alleges, that Respondent has

1 provided a discretionary approval (as defined by CEQA) of the Project that necessitated CEQA
2 review.

3 21. Members of the City Council have publicly represented that the Project has been
4 approved and that construction has commenced.

5 22. Petitioner is informed and believes, and thereon alleges, that Respondent is the
6 Lead Agency for the Project. Alternatively, one of the Doe Respondents is the Lead Agency.

7 23. Petitioner is informed and believes, and thereon alleges, that neither Respondent
8 nor any of the Doe Respondents have performed any review under CEQA of the proposed
9 Project.

10 **JURISDICTION AND VENUE**

11 24. This Court has jurisdiction over the matters alleged herein and this Petition is
12 authorized by and arises under Public Resources Code section 21168 and/or 21168.5 and Code
13 of Civil Procedure section 1085 and/or 1094.5.

14 25. The action is appropriately filed in Kern County pursuant to Code of Civil
15 Procedure section 393, because the Project is located in Kern County and the environmental
16 effects of the Project and associated actions, including the depletion of the groundwater aquifer,
17 will be felt in Kern County. Petitioner reserves the right to seek transfer of this action to a neutral
18 county under Code of Civil Procedure section 394.

19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 26. Petitioner has performed or is excused from performing any and all conditions
21 precedent to filing the instant action and has exhausted any and all administrative remedies to the
22 extent required by law, including as required by Public Resources Code section 21177.

23 27. Petitioner is informed and believes, and thereon alleges, that Respondent did not
24 conduct any public hearing on the Project as required by CEQA (or, alternatively, it was not
25 properly publicly noticed) at which Petitioner could have presented its specific objections to the
26 Project.

27 28. Pursuant to Government Code section 905, subdivision (i), this action is not
28 subject to the Government Claims Act.

NOTICE OF PROCEEDING

29. Petitioner has complied with the requirements of Public Resources Code section 21167.5 in mailing a notice of commencement of this action to Respondent, prior to filing this Petition. A copy of said notice and proof of service is attached as Exhibit "A" hereto and incorporated herein by this reference.

30. Petitioner will comply with the requirements of Public Resources Code section 21167.7 and Code of Civil Procedure section 388 by mailing a copy of this Petition to the Attorney General of the State of California.

ATTORNEYS' FEES

31. Petitioner is entitled to recover attorneys' fees from Respondent and Real Parties in Interest pursuant to Code of Civil Procedure section 1021.5, because this action will, among other things, confer a significant benefit on the general public and a large class of persons, and the necessity and burden of private enforcement makes an award of fees appropriate.

DECLARATORY RELIEF

32. An actual controversy has arisen and now exists between Petitioner and Respondent concerning their respective rights and duties, in that Petitioner contends Respondent has violated CEQA with respect to the Project, whereas Respondent disputes these contentions and contends that it has complied with CEQA with respect to the Project.

33. Petitioner desires a judicial determination and declaration that Respondent has not complied with CEQA with respect to the Project. A judicial resolution of this controversy is necessary and appropriate.

INJUNCTIVE RELIEF

34. Petitioner is informed and believes, and thereon alleges, that Respondent and Real Party are threatening to carry out the Project in the near future and that the Project will irreparably harm the environment by, among other things, exporting water from the Basin without replacement.

35. A temporary restraining order and preliminary and permanent injunction should issue restraining Respondents and Real Party from carrying out the Project, as Petitioner has no

plain, speedy, and adequate remedy at law for this harm.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays for judgment as follows:

1. For a writ of mandate or peremptory writ issued under the seal of this Court and directing Respondents to:
 - a. Void and set aside any and all discretionary approvals pertaining to the Project by any Respondent and any contracts entered into pursuant to the Project; and
 - b. Refrain from granting any further approvals, authorities, or permits for the Project unless and until Respondents comply fully with the requirements of CEQA;
2. For a judgment determining and declaring that any and all discretionary approvals of the Project do not comply with applicable law and therefore are null and void;
3. For a temporary restraining order, a preliminary injunction, and a permanent injunction, restraining Respondent and Real Party from engaging in any Project activity or activities;
4. For its costs of suit;
5. For an award of its reasonable attorneys' fees, including but not limited to fees authorized under Code of Civil Procedure section 1021.5; and
6. For such other and further relief as the Court may deem just and proper.

Dated: April 22, 2024

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By:



ALAN F. DOUD

BRETT A. STROUD

CONOR V. O'BRIEN

*Attorneys for Petitioner Southern San Joaquin
Municipal Utility District*

[Petition Deemed Verified Under Code of Civil Procedure Section 446]

EXHIBIT A



Brett A. Stroud, Partner

April 19, 2024

VIA CERTIFIED MAIL

Mayor Joe L. Alindajao, Esq.
City of Delano
1015 Eleventh Avenue
Delano, CA 93216

Members of the City Council
City of Delano
1015 Eleventh Avenue
Delano, CA 93216

**Re: Notice of Commencement of Action by Southern San Joaquin Municipal
Utility District Regarding the City of Delano's Approval of the Niagara
Water Bottling Plant Project.**

Dear Mayor Alindajao & Members of the Delano City Council:

PLEASE TAKE NOTICE that pursuant to California Public Resources Code section 21167.5, the Southern San Joaquin Municipal Utility District ("Petitioner") intends to commence an action by filing a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") in the Superior Court of California for the County of Kern under the California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA"), against the City of Delano ("Respondent" or "City") as the CEQA lead agency with respect to its alleged discretionary approval of a proposed project by Niagara Bottling, LLC, to construct and operate a water bottling plant facility (the "Project"), in violation of CEQA. Petitioner will name Niagara Bottling, LLC, as a real party in interest in the Petition.

The Petition will allege, among other things, that the City, as the CEQA lead agency for the Project, failed to properly follow the requirements of CEQA by (1) failing to conduct any environmental review as required under CEQA, and (2) improperly determining that the Project is exempt from the requirements of CEQA.

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John Young 1913-2003 • Joseph Wooldridge 1913-1996 • A. Cameron Paulden 1927-1984

The Petition will seek, among other relief: (1) a writ of mandate or peremptory writ to void and set aside any discretionary approvals pertaining to the Project, (2) a declaratory judgment voiding any and all discretionary approvals of the Project, (3) injunctive relief in the form of a temporary restraining order, a preliminary injunction, and a permanent injunction, restraining the City and real party Niagara Bottling, LLC, from engaging in the Project or related activities, and (4) recovery of Petitioner's costs of suit and award of reasonable attorneys' fees.

If you would like additional information or have any questions, please do not hesitate to contact me. Thank you for your time and attention to this matter.

Very truly yours,



Brett A. Stroud
*Attorney for Southern San Joaquin
Municipal Utility District*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I, Kristen L. 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 April 19, 2024, I caused to be served the below listed document(s) entitled as: **Notice of Commencement of Action by Southern San Joaquin Municipal Utility District Regarding the City of Delano's Approval of the Niagara Water Bottling Plant Project** on the interested parties in this action, as listed below:

Mayor Joe L. Alindajao, Esq.
City of Delano
1015 Eleventh Avenue
Delano, CA 93216

Members of the City Council
City of Delano
1015 Eleventh Avenue
Delano, CA 93216

- [X] (BY MAIL) on April 19, 2024, at Bakersfield, California, pursuant to Code of Civil Procedure section 1013, subdivision (a). By placing / / the original or / x / a true copy thereof enclosed in a sealed envelope. 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 foregoing is true and correct.

Executed on April 19, 2024, at Bakersfield, California.


KRISTEN L. MOEN