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**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;

Case No.

**Petitioner,**

V.

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

**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.])

## Respondents.

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

## Real Parties in Interest

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

4 **INTRODUCTION**

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

10 **PARTIES**

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

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

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

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

26 6. Petitioner is unaware of the true names and capacities of Real Parties in Interest,  
27 sued herein as DOES 101-200, and therefore sues such persons, entities, and organizations by  
28 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.4<sup>th</sup> 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.

1

## NOTICE OF PROCEEDING

2 29. Petitioner has complied with the requirements of Public Resources Code section  
3 21167.5 in mailing a notice of commencement of this action to Respondent, prior to filing this  
4 Petition. A copy of said notice and proof of service is attached as Exhibit "A" hereto and  
5 incorporated herein by this reference.

6 30. Petitioner will comply with the requirements of Public Resources Code section  
7 21167.7 and Code of Civil Procedure section 388 by mailing a copy of this Petition to the  
8 Attorney General of the State of California.

9

## ATTORNEYS' FEES

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

14

## DECLARATORY RELIEF

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

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

22

## INJUNCTIVE RELIEF

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

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

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

2 **PRAYER FOR RELIEF**

3 WHEREFORE, the Petitioner prays for judgment as follows:

4 1. For a writ of mandate or peremptory writ issued under the seal of this Court and  
5 directing Respondents to:

6 a. Void and set aside any and all discretionary approvals pertaining to the Project  
7 by any Respondent and any contracts entered into pursuant to the Project; and  
8 b. Refrain from granting any further approvals, authorities, or permits for the  
9 Project unless and until Respondents comply fully with the requirements of  
10 CEQA;

11 2. For a judgment determining and declaring that any and all discretionary approvals  
12 of the Project do not comply with applicable law and therefore are null and void;

13 3. For a temporary restraining order, a preliminary injunction, and a permanent  
14 injunction, restraining Respondent and Real Party from engaging in any Project  
15 activity or activities;

16 4. For its costs of suit;

17 5. For an award of its reasonable attorneys' fees, including but not limited to fees  
18 authorized under Code of Civil Procedure section 1021.5; and

19 6. For such other and further relief as the Court may deem just and proper.

20

21 Dated: April 22, 2024

22 THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

23 By:



24 ALAN F. DOUD

25 BRETT A. STROUD

26 CONOR V. O'BRIEN

27 *Attorneys for Petitioner Southern San Joaquin  
Municipal Utility District*

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

# **EXHIBIT A**



A Limited Liability Partnership • Est. 1939

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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1800 30th Street, 4th Floor • Bakersfield, CA 93301  
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Mayor Joe L. Alindajao & Council Members

April 19, 2024

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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,



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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:

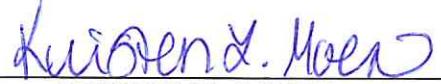
Mayor Joe L. Alindajao, Esq.  
City of Delano  
1015 Eleventh Avenue  
Delano, CA 93216

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

(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