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Exempt from filing fees pursuant to Gov't Code Section 6103

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

IMPERIAL IRRIGATION DISTRICT,

Petitioner,

v.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA and Does 1 through 20, inclusive,

Respondents

COACHELLA VALLEY WATER DISTRICT; PALO VERDE IRRIGATION DISTRICT; CITY OF NEEDLES; and DOES 21-40, inclusive

Real Parties in Interest.

CASE NO.

Filed Under Calif. Environmental Quality Act (CEQA)

VERIFIED PETITION FOR WRIT OF MANDATE

Petitioner Imperial Irrigation District ("Petitioner" or "IID") files this Verified Petition for Writ of Mandate ("Petition") and alleges as follows:

INTRODUCTION

1. The primary purpose of the California Environmental Quality Act ("CEQA") is to identify a project's significant effects on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided. CEQA requires agencies to analyze the potential environmental impacts of a project at the agency's earliest commitment to the project, so that the agency's commitment to the project does not foreclose its ability to mitigate or avoid the project's environmental impacts.

2. In this case, Respondent The Metropolitan Water District of Southern California ("Metropolitan") violated the foregoing principles of CEQA by committing to enter into agreements that will require Metropolitan to forgo diverting up to hundreds of thousands of acre-feet of water annually from the Colorado River without considering how Metropolitan will make up the shortfall. In so doing, Metropolitan failed to comply with CEQA's requirements to engage in a review of the environmental consequences of its commitment to forgo deliveries from the Colorado River at the earliest possible time.

3. Petitioner brings this action on behalf of itself and as the governmental agency serving water to the landowners and water users within its boundaries. This Petition challenges approvals by the Board of Directors of Metropolitan that occurred on December 11, 2018 for Board Item No. 8-11 (the "December Approval") and March 12, 2019 for Board Item 8-1 (the "March Approval"), hereinafter collectively referred to as the "Approvals." The Approvals authorized Metropolitan to enter into "the Lower Basin Drought Contingency Plan" ("LBDCP"). Petitioner supports cooperative efforts among all parties diverting water from the Colorado River to comprehensively and prudently manage water supply on the River. However, restrictions on deliveries from the Colorado River create demands for water from other sources, which, in turn, result in other environmental impacts. Metropolitan's Approvals were problematic because, in committing to the LBDCP, Metropolitan improperly deferred consideration of the means by which Metropolitan would obtain water to make up for the reduced deliveries from the Colorado

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River, which violates CEQA.

4. Cumulatively over the term of the LBDCP, Metropolitan is potentially obligated to contribute over 2 million acre-feet of water to the Colorado River in Lake Mead. Metropolitan's Approvals deferred consideration of the means by which Metropolitan would meet its water demands and, in so doing, Metropolitan did not analyze environmental impacts from acquiring water from other sources to fill this massive new hole in Metropolitan's water supply.

5. Petitioner seeks a writ of mandate directing Metropolitan to vacate the Approvals and to engage in a meaningful review of the environmental impacts of a commitment to the LBDCP in full compliance with CEQA's requirements.

PARTIES

6. Petitioner IID was formed in 1911 and is an irrigation district organized and existing under the California Irrigation District Law, Water Code sections 20500 et seq. IID is headquartered in Imperial, California within Imperial County. Imperial County's economy is based primarily on agriculture made possible through IID's diversion and delivery of water from the Colorado River.

7. Respondent Metropolitan is a public corporation organized, existing, and functioning under The Metropolitan Water District Act, Water Code App., Ch. 109. Metropolitan's membership is comprised of fourteen California cities and twelve California water agencies, all located in Southern California. Metropolitan is party to the LBDCP.

8. Real Party in Interest Coachella Valley Water District ("Coachella") is a water district formed in 1918 and organized and existing under Water Code sections 34000 et seq., with its headquarters in Coachella, California. Coachella provides agricultural irrigation and domestic drinking water to customers in the Coachella Valley in Riverside County. Coachella's boundaries also extend to small portions of San Diego and Imperial Counties. Coachella is a party to the LBDCP.

9. Real Party in Interest Palo Verde Irrigation District is ("Palo Verde") is an irrigation district organized and existing under the California Irrigation District Law, Water Code sections 20500 et seq., with its headquarters in Blythe, California. Palo Verde borders the

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Colorado River and primarily provides irrigation to agricultural customers within its boundaries in Riverside and Imperial Counties. Palo Verde is a party to the LBDCP.

10. Real Party in Interest City of Needles ("Needles") is a charter city existing under the laws of the State of California. Needles is located in the County of San Bernardino, California and borders the Colorado River in the Mohave Valley. Needles is a party to the LBDCP.

11. Petitioners do not know the true names and capacities, whether individual, corporate, associate, or otherwise, of respondents Does 1 through 20, inclusive, and therefore sue said respondents under fictitious names. Petitioners will amend this Petition to show their true names and capacities when the same have been ascertained. Each of the respondents is the agent or employee of Respondents, and each performed acts on which this action is based within the course and scope of such Respondents' agency or employment.

12. Petitioners do not know the true names and capacities, whether individual, corporate, associate, or otherwise, of real parties in interest Does 21 through 40, inclusive, and therefore sue said real parties in interest under fictitious names. Petitioners will amend this Petition to show their true names and capacities when the same have been ascertained.

JURISDICTION AND VENUE

13. The Los Angeles County Superior Court has jurisdiction over the matters alleged herein pursuant to Code of Civil Procedure sections 525, 526, 527, 1060, 1085, 1094.5 and Public Resources Code sections 21167, 21168, and 21168.5.

14. Venue is appropriate in Los Angeles County pursuant to Code of Civil Procedure sections 393, 394 and 395 because Respondent is located within the County of Los Angeles. Among other things, Respondent's Project threatens water users, natural resources, and the environment, part of which is located within the County of Los Angeles.

BACKGROUND

The Upper and Lower Colorado River Basins.

15. The Colorado River Basin ("Basin") is a critical source of water and power supplies for seven western states and Mexico. The Basin covers approximately 246,000 square

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miles, nearly all of which are in the United States. The Basin includes the Colorado River and its tributaries, with the river eventually crossing the southern border of the United States into Mexico, thence discharging into the Gulf of California.

16. The Colorado River is managed and operated under numerous compacts, federal laws, court decisions and decrees, contracts, and regulatory guidelines collectively known as "The Law of the River." Part of The Law of the River, the Colorado River Compact, divided the Basin in 1922 into two areas, the Upper Basin (comprising Colorado, New Mexico, Utah and Wyoming) and the Lower Basin (Nevada, Arizona and California). The compact requires that Upper Basin states not deplete the flow of the river below 7,500,000 acre-feet during any period of ten consecutive years, with the Lower Basin also being entitled to 7,500,000 acre-feet annually. Based on rainfall patterns observed in the years prior to execution of the compact, the amounts specified in the compact were assumed to allow a roughly equal division of water between the two basins. The states within each basin were required to divide their respective 7,500,000-acre foot per year share allotment among themselves. Additionally, pursuant to a 1944 water treaty with Mexico, an additional 1,500,000 maf per year of Colorado River flows is committed to Mexico.

California's Entitlement to 4.4 Million Acre-feet of Colorado River Water

17. The Boulder Canyon Project Act of 1928: (1) ratified the 1922 Compact; (2) authorized the construction of Hoover Dam and related irrigation facilities in the Lower Basin; (3) apportioned the Lower Basin's annual 7.5 million acre-feet ("maf") among the states of Arizona (2.8 maf), California (4.4 maf) and Nevada (0.3 maf); and (4) authorized and directed the Secretary of the United States Department of Interior to function as the sole contracting authority for Colorado River water use in the Lower Basin. California's annual Colorado River entitlement was thus established at 4.4 maf.

IID Holds Senior Water Rights on the Colorado River

18. The allocation of California's 4.4 maf annual entitlement among California entities was subsequently established in the California Seven Party Agreement of 1931. The Seven Party Agreement established general annual allocations among Palo Verde, Yuma Project, IID,

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Coachella, Metropolitan, and the City and County of San Diego.

19. The 1922 Colorado River Compact also provided that present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by the Compact. The 1928 Boulder Canyon Project Act recognized and protected these rights by providing that Colorado River facilities "shall be used; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River Compact ..." Pursuant to the terms of the Boulder Canyon Project Act, California's annual entitlement of 4.4 maf was to be used to satisfy "any rights which existed on December 21, 1928." IID's water rights are exclusive to the Colorado River and IID holds "present perfected rights" of 2.6 maf annually from the Colorado River with a priority date of 1901. IID also holds significant post-1914 water rights pursuant to State Water Resources Control Board Permit 7643, which authorizes IID to divert a maximum of 10,000 cubic feet per second from the Colorado River for irrigation, domestic, municipal and environmental protection uses.

The Long-Term Problem: Supply and Demand Imbalance on the Colorado River

20. Over time, water supplies available from the Colorado River have been in decline. Based on observed data from the United States Bureau of Reclamation ("Reclamation"), average natural Colorado River flow from 1906 through 2012 was approximately 16.2 maf annually. The period from 2000 to 2018, however, was the lowest 19-year period for natural flow in the last century. Based on future conditions and demands, Reclamation has estimated that future imbalances will range from zero to 6.8 maf, with a median imbalance between supply and demand of 3.2 maf.

The 2003 Quantification Settlement Agreement

21. For decades following the Boulder Canyon Project Act, California was legally allowed to consumptively use more water from the Colorado River than its annual entitlement of 4.4 maf because Arizona and Nevada were not yet using their full entitlements. Eventually however, when Arizona and Nevada began to use their full apportionment, California developed the "4.4 Plan" to reduce its annual water diversions to operate within its entitlement established in *Arizona v. California*. At the same time, Southern California's water needs continued to grow

and grow.

22. The 4.4 Plan was used as the framework for the Quantification Settlement Agreement ("QSA"), which is a complex multi-party series of agreements that include the quantification of entitlements to Colorado River water within California and provides for the nation's largest agriculture-to-urban conserved water transfer. Specifically, the QSA caps IID's consumptive use entitlement of Colorado River at 3.1 maf per year. The QSA also requires IID to transfer conserved water, in annually varying amounts, up to full implementation in some years of over 475,000 acre-feet per year.

Adjusting Basin Diversions Has Resulted in Significant Environmental Impacts

23. Adjusting and reallocating diversions from the Basin is well known to produce significant environmental impacts. It can reduce the water supplied to an area that leads to environmental impacts or result in new diversions to service the area, which can result in impacts in the areas from where the replacement water supplies emanate.

24. The Salton Sea is one example. The Salton Sea is a shallow, saline lake that is approximately 35 miles long and 15 miles wide, located in the lowest elevations in the Colorado Desert of Imperial and Riverside Counties. The Sea is the modern incarnation of Lake Cahuilla, a prehistoric, intermittent freshwater sea that filled and evaporated multiple times over thousands of years as the Colorado River meandered—shifting between emptying into the Gulf of California, or diverting northwest, into the Salton Trough.

25. With nearly 90 percent of California's wetlands lost to development, the Salton Sea over the last century has become a vital stop on the Pacific Flyway for millions of birds, making it one the most significant avian habitats in the continental United States. According to the California Department of Fish and Wildlife, over twenty sensitive bird species occupy the Salton Sea and surrounding habitat, or migrate through the Salton Sea in significant numbers. The endangered desert pupfish—a native fish species—also currently inhabits the Salton Sea. Introduced tilapia make up the bulk of the Salton Sea's fish population, which has served as a food source for millions of migratory birds.

26. The Salton Sea is primarily sustained by agricultural return flows from the

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Imperial and Coachella Valleys. An effect of the QSA, however, is that less water flows into the Salton Sea as return flows from IID's agricultural water users. Lower inflows to the Salton Sea, in turn, decrease the water elevation and increase the salinity levels of the Sea (thereby harming fish and wildlife) and result in exposed playa causing significant impacts to air quality.

27. The Salton Sea experience is an example of the kinds of significant environmental consequences that can result from the implementation of plans affecting water diversions from the Colorado River. CEQA exists to assure that public agencies like Metropolitan identify and address these impacts before committing to such plans.

The 2007 Guidelines Coordinated Drought Planning on the Colorado River

28. As the Colorado entered its eighth year of drought in 2007, the Lower Basin entities adopted the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead ("2007 Guidelines") in effort to coordinate operations of the two main reservoirs in the Basin.

29. The 2007 Guidelines included criteria for "balancing" releases between Lakes Powell and Mead and created a mechanism for storing conserved water in Lake Mead. (https://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf.) The 2007 Guidelines also included a schedule of Lower Basin reductions in Colorado River diversions for Arizona and Nevada if Lake Mead drops to an elevation of 1,075 feet or less (i.e., a "shortage condition").

30. In light of the ongoing historic drought and in order to prevent reaching critically low elevations in Lake Mead, parties in the Lower Basin developed the LBDCP. The purpose of the LBDCP is to incentivize the creation and storage of additional conserved water in Lake Mead, as well as provide for contributions of water to Lake Mead at certain elevations of Lake Mead from California, and additional contributions of water from Arizona and Nevada beyond what is already required in the 2007 Guidelines.

31. The LBDCP comprises of interstate and intrastate agreements. The LBDCP interstate agreement requires that when Lake Mead reaches certain predetermined elevations, the

Lower Basin states would make "contributions" to Lake Mead by forgoing deliveries of Colorado River water beyond the volumes agreed to under the 2007 Guidelines or restricting the delivery of conserved water being stored in Lake Mead. The LBDCP is designed to incentivize the voluntary conservation of water to be stored in Lake Mead. It also commits Reclamation to conserving 100,000 acre-feet of water per year to be left in the Colorado River system at Lake Mead. The LBDCP aims to prevent Lake Mead's elevation from falling below 1,020 feet.

32. California's contribution under the LBDCP interstate agreement is, depending on Lake Mead water elevations, up to 350,000 acre-feet annually through December 31, 2026. The responsibilities for making California's contributions are determined among the parties within California through the intrastate agreements. Metropolitan initially proposed one arrangement for the responsibility of California's contributions among the California parties in its December Approval, but then drastically changed course in its March Approval. That shifting—and the total quantity of water Metropolitan has cumulatively committed in the December Approval and March Approval—and the significant and unanalyzed environmental impacts that result, are the subject of this action.

Metropolitan's December Approval

33. On December 11, 2018 Metropolitan approved a proposed version of the Lower Basin Drought Contingency Plan Agreement and Exhibit 1 to that Agreement, with California's contributions to Lake Mead from four entities pursuant to intrastate agreements as follows:

- Pursuant to a proposed agreement between Metropolitan and Coachella, Coachella agreed to contribute 7 percent of California's DCP Contribution for each year that California is required to make a DCP Contribution; and
- Pursuant to a proposed agreement between Metropolitan and Palo Verde, Palo Verde agreed to contribute 8 percent of California's DCP Contribution for each year that California is required to make a DCP Contribution; and
- Pursuant to a proposed agreement between Metropolitan and IID, IID agreed to contribute 125,000 acre-feet of California's DCP Contribution per year for the first two years that California is required to make a DCP Contribution; and Metropolitan agreed to contribute any remaining portion of California's DCP Contribution not covered by IID, Coachella or Palo Verde; and

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- The California parties' responsibilities under the LBDCP were further defined by a proposed amendment to the California Agreement for the Creation and Delivery of Extraordinary Conservation Intentionally Created Surplus.

34. Under the proposed agreement between Metropolitan and IID, IID agreed that "[d]espite its senior priority agricultural water right, IID agrees to assume responsibility for up to 250,000 acre-feet of California's DCP Contributions under the LBDCP to support the Colorado River through the duration of the 2007 Interim Guidelines."

35. Thus, pursuant to the LBDCP as approved by Metropolitan in December of 2018, IID would provide up to 250,000 acre-feet for California's contributions to Lake Mead over two years; Coachella would provide 7% and Palo Verde would provide 8% of the California contribution annually. Metropolitan would make up the balance, up to the cap on California's total annual contribution of 350,000 AF. Under this formula, Metropolitan would provide up to 172,500 acre-feet the first two years and up to 297,500 acre-feet annually for subsequent years, up to a total of 1,832,500 acre-feet—all committed without any environmental review.

Metropolitan's March Approval

36. Months after Metropolitan's December Approval regarding the LBDCP, Metropolitan changed course. Specifically, Metropolitan took action to cover an additional 250,000 acre-feet of California's contributions to Lake Mead in place of the volumes that would have been supplied by IID. By doing so, Metropolitan increased its responsibility under the LBDCP for California's contribution to up to *2,082,500 acre-feet*, creating a potential deficit in its supply to meet its water demands. Where the water supply would come from, and what environmental impacts could result from Metropolitan's need to acquire such water to fill this sizable hole in its water supply, are entirely unknown. The Approvals defer any consideration of the means and measures Metropolitan will take to meet its water supply demands as a result of the commitment the Approvals authorized.

37. Metropolitan's March Approval was bereft of detail, to the point that Metropolitan's Board did not even have the LBDCP agreements they were approving before them. Metropolitan's staff report for the March Approval stated that it requested authority: "to

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participate in the Lower Basin Drought Contingency Plan (DCP) on behalf of California if the boards of one or more of the other California Contractors do not authorize their agencies to sign the Lower Basin DCP Agreement" and notes that "conforming revisions" to numerous interstate and intrastate agreements may be necessary, which would be subject to later review and approval by Metropolitan staff.

38. Despite the dramatic volumes of water being provided by Metropolitan under the LBDCP, Metropolitan's Approvals fail to recognize that by committing to the LBDCP on the terms of the Approvals, under CEQA Metropolitan has approved the overall project, including the means and measures that will be undertaken as a result of Metropolitan's commitment. In violation of CEQA, Metropolitan wrongly determined that the project is exempt from CEQA review.

39. IID participated actively throughout the administrative process that led to Metropolitan making its December Approval and March Approval and exhausted its administrative remedies pursuant to Public Resources Code section 21177.

40. Following Metropolitan's December Approval and March Approval, no notice of exemption or notice of determination was filed by Metropolitan and this action is brought within 180 days of both Metropolitan's December Approval and March Approval. (Pub. Res. Code § 21167.)

41. On April 15, 2019, prior to commencement of this action, Petitioner served written notice of commencement of this action on Respondent in accordance with the requirements of Public Resources Code section 21167.5. A true and correct copy of this notice and a proof of service is attached hereto as Exhibit A and is incorporated herein by reference.

42. On April 16, 2019, Petitioner served the Attorney General of the State of California ("Attorney General") with a copy of the Petition in accordance with the requirements of Public Resources Code section 21167.7. A true and correct copy of the notice to the Attorney General is attached hereto as Exhibit B and is incorporated herein by reference.

FIRST CAUSE OF ACTION

[Violation of California Environmental Quality Act]

43. Petitioner incorporates by this reference paragraphs 1 through 42 as though they were set forth in full herein.

44. In adopting the December Approval and March Approval, Metropolitan engaged in a prejudicial abuse of discretion and failed to proceed in the manner required by law under CEQA for a number of reasons, including, without limitation:

a. The Approvals constitute a commitment to a project that requires environmental review under CEQA, which Metropolitan failed to perform.

b. In violation of CEQA, Metropolitan wrongly determined that the Approvals were exempt. The determination is not supported by substantial evidence in the record. By improperly determining the project was exempt under CEQA, Metropolitan has foreclosed the development of mitigation measures or project alternatives that could have reduced the project's impacts to the environment.

c. The project description fails to describe the whole of the activity that would be carried out as a result of the Approvals.

d. A complete description of the Approvals was not presented to the Metropolitan board prior to its adoption of the Approvals which precluded informed decision-making.

e. The project description fails to contain specific information about the project sufficient to allow a complete evaluation and review of its environmental impacts, including, without limitation, the sources of water that would be necessary to Metropolitan to fulfill its commitment and the environmental effects associated with obtaining water for those sources.

f. By failing to adequately identify the project, Metropolitan made it impossible for the public to adequately evaluate the potential environmental impacts of Metropolitan's approvals.

45. Metropolitan had a mandatory duty to comply with CEQA prior to approving the

discretionary actions at issue in this Petition. Metropolitan's December Approval and March Approval for action related to the LBDCP failed to comply with the requirements of CEQA and the Guidelines.

46. By failing entirely to engage in any meaningful review under CEQA, Metropolitan prejudicially abused its discretion and failed to proceed in a manner required by law. Consequently, Metropolitan's December Approval and March Approval concerning the project are invalid and must be set aside.

47. Petitioner has no plain, speedy or adequate remedy in the ordinary course of law. Petitioner seeks a writ of mandate directing Metropolitan to vacate the Approvals and directing Metropolitan to analyze the environmental impacts of its commitment to the LBDCP under CEQA in connection with any further action to commit to the LBDCP.

48. Petitioner is informed and believes, and thereon alleges, that unless Petitioner is granted injunctive relief, it will suffer irreparable harm in that the implementation of the Project activities described herein will cause permanent harm to Petitioner, its landowners and water users, and will create adverse environmental impacts.

49. IID brings this action in the public interest, and is not seeking relief greater than or different from the relief sought for the general public. If successful, this action would enforce the mandates of CEQA and thus enforce the public's right to adequate environmental review under that statute. IID is entitled to receive attorneys' fees from Metropolitan pursuant to Code of Civil Procedure section 1021.5.

PRAYER

WHEREFORE, IID respectfully prays for the following relief:

1. For a peremptory writ of mandate directing Metropolitan to:

a. Vacate and set aside Metropolitan's December Approval and March Approval and all related actions and approvals;

b. Comply with CEQA and to take any other action as required by Public Resources Code section 21168.9; and

c. Suspend any and all activity pursuant to Metropolitan's December

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Approval and March Approval and all related actions and approvals in furtherance of the project, until Metropolitan has complied with all requirements of CEQA and all other applicable laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public Resources Code section 21168.9;

2. For an injunction restraining Metropolitan, and all persons working on its behalf, from taking any other action in furtherance of the December Approval and March Approval and all related approvals that may result in a change or alteration in the physical environment pending full compliance with CEQA;

3. For IID's costs of suit;

4. For IID's reasonable attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and other provisions of law; and

5. For such other relief as the Court may deem just and proper.

DATED: April 16, 2019

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By: _____

DAVID R.E. ALADJEM
Attorney for Petitioner and Plaintiff
IMPERIAL IRRIGATION DISTRICT