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6 NORTH COAST RIVERS ALLIANCE, LARRY ROSE, M.D.,
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7 SUSAN KIRSCH, FRANK EGGER, and PETER LACQUES

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF MARIN

11 NORTH COAST RIVERS ALLIANCE, LARRY)
ROSE, M.D., LARRY BRAGMAN, RITCHIE)
12 COOK, FORD GREENE, SUSAN KIRSCH,)
FRANK EGGER, and PETER LACQUES,)

13 Petitioners and Plaintiffs,)
14)

15 v.)

16 MARIN MUNICIPAL WATER DISTRICT)
BOARD OF DIRECTORS, and DOES I-XX,)

17 Respondents and Defendants,)
18)

18 and)

19 DOES XXI-L,)

20 Real Parties in Interest.)
21)

Civ. No.
**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**
**(CEQA CASE FOR ASSIGNMENT
TO A CEQA JUDGE)**

22 **SUMMARY OF PETITION AND RELIEF SOUGHT**

23 Petitioners/plaintiffs North Coast Rivers Alliance, Larry Rose, M.D., Lawrence Bragman, Ritchie
24 Cook, Ford Greene, Susan Kirsch, Frank Egger, and Peter Lacques (collectively, "petitioners") bring this
25 action to protect San Francisco Bay and the citizens of Marin from the harmful effects of the proposed
26 Marin Municipal Water District Desalination Project ("the Project"). The Project would induce a
27 population increase of up to 85,000 people within Marin County, discharge up to 30 million gallons per
28 day ("GPD") of harmful brine into San Rafael Bay, increase energy consumption by the County's biggest

1 user – the Marin Municipal Water District (“MMWD”) – by up to four times, and expose the public water
2 supply to potential contamination by toxic, pathogenic, carcinogenic, teratogenic and endocrine-
3 disrupting treated sewage from MMWD’s adjacent sewer outfall. Petitioners request a writ of mandate
4 from this Court pursuant to Public Resources Code (“PRC”) sections 21168 and 21168.5 and Code of
5 Civil Procedure (“CCP”) sections 1085 and 1094.5 setting aside the adoption by respondent/defendant
6 Marin Municipal Water District Board of Directors (“the Board” or “MMWD”) of the following
7 approvals for the Project:

- 8 (1) Resolution No. 7869, dated February 4, 2009, certifying the Final Environmental Impact
9 Report; and
- 10 (2) Resolution No. 7925, dated August 19, 2009, approving the Project and adopting Findings,
11 a Statement of Overriding Considerations, a Mitigation Monitoring and Reporting Program, and a Notice
12 of Determination purporting to find the Project consistent with the California Environmental Quality Act,
13 PRC sections 21000 *et seq.* (“CEQA”).

14 Petitioners also seek declaratory relief under CCP section 1060 declaring unlawful, and injunctive
15 relief under CCP section 526 enjoining the Board from permitting or taking any actions that implement,
16 the Project without full compliance with CEQA and CCP sections 1085 and 1094.5.

17 **PARTIES**

18 1. Petitioner NORTH COAST RIVERS ALLIANCE (“NCRA”) is a non-profit
19 unincorporated association whose members reside, work, or recreate in Northern California. NCRA was
20 formed for the purpose of protecting the rivers and watersheds of California’s North Coast, including San
21 Rafael Creek and other waterways tributary to San Francisco Bay, from watershed pollution and
22 degradation. Its members use and enjoy the natural resources of California’s North Coast for recreational,
23 aesthetic, scientific study, and related non-consumptive uses. NCRA has urged the Board to disapprove
24 the Project, to rectify errors and omissions in its Environmental Impact Report (“EIR”) for the Project,
25 and to expand the Board’s water and energy conservation efforts. The interests of NCRA and its
26 members have been, are being, and unless the relief requested herein is granted, will be adversely affected
27 and injured by the Board’s approval of the Project and by the consequent induced population growth,
28 threat to public health, excessive energy consumption and harm to San Francisco Bay and the natural

1 environment that will result from the Project.

2 2. Petitioner LARRY ROSE, M.D. is a resident of Mill Valley, in Marin County, an
3 Assistant Professor of Occupational and Environmental Medicine at the University of California, San
4 Francisco, and the former Senior Medical Director for Cal OSHA. Petitioner Rose uses and enjoys the
5 land, water and other environmental resources of Marin and Sonoma Counties. Petitioner Rose will be
6 adversely affected and injured by the Board's approval of the desalination Project and failure to adopt an
7 adequate EIR, and by the Project's consequent unexamined and inadequately mitigated impacts on public
8 health, land use, water and air quality, energy usage, greenhouse gas emissions, and other environmental
9 resources. Petitioner Rose objected to the Project before its approval.

10 3. Petitioner LARRY BRAGMAN is a resident of Fairfax, in Marin County, where he
11 practices law and has been a member of the Fairfax Town Council since 2003. Petitioner Bragman uses
12 and enjoys the land, water and other environmental resources of Marin and Sonoma Counties. Petitioner
13 Bragman will be adversely affected and injured by the Board's approval of the desalination Project and
14 failure to adopt an adequate EIR, and by the Project's consequent unexamined and inadequately mitigated
15 impacts on public health, land use, water and air quality, energy usage, greenhouse gas emissions, and
16 other environmental resources. Petitioner Bragman objected to the Project before its approval.

17 4. Petitioner RITCHIE COOK is a resident of San Quentin Village, in Marin County, where
18 he has lived for 35 years. Petitioner Cook uses and enjoys the land, water and other environmental
19 resources of Marin and Sonoma Counties. Petitioner Cook will be adversely affected and injured by the
20 Board's approval of the desalination Project and failure to adopt an adequate EIR, and by the Project's
21 consequent unexamined and inadequately mitigated impacts on public health, land use, water and air
22 quality, energy usage, greenhouse gas emissions, and other environmental resources. Petitioner Cook
23 objected to the Project before its approval.

24 5. Petitioner FORD GREENE is a resident of San Anselmo, in Marin County, where he
25 practices law and has been a Town Council Member since 2007. Petitioner Greene uses and enjoys the
26 land, water and other environmental resources of Marin and Sonoma Counties. Petitioner Greene will be
27 adversely affected and injured by the Board's approval of the desalination Project and failure to adopt an
28 adequate EIR, and by the Project's consequent unexamined and inadequately mitigated impacts on public

1 health, land use, water and air quality, energy usage, greenhouse gas emissions, and other environmental
2 resources. Petitioner Greene objected to the Project before its approval.

3 6. Petitioner SUSAN KIRSCH is a resident of Mill Valley, in Marin County, where she has
4 lived for several decades. Petitioner Kirsch uses and enjoys the land, water and other environmental
5 resources of Marin and Sonoma Counties. Petitioner Kirsch will be adversely affected and injured by the
6 Board's approval of the desalination Project and failure to adopt an adequate EIR, and by the Project's
7 consequent unexamined and inadequately mitigated impacts on public health, land use, water and air
8 quality, energy usage, greenhouse gas emissions, and other environmental resources. Petitioner Kirsch
9 objected to the Project before its approval.

10 7. Petitioner FRANK EGGER is a resident of Fairfax, in Marin County, the former Mayor of
11 Fairfax, and currently President of the North Coast Rivers Alliance. Petitioner Egger uses the land, water
12 and other environmental resources of Marin and Sonoma Counties. Petitioner Egger will be adversely
13 affected and injured by the Board's approval of the desalination Project and failure to adopt an adequate
14 EIR, and by the Project's consequent unexamined and inadequately mitigated impacts on public health,
15 land use, water and air quality, energy usage, greenhouse gas emissions, and other environmental
16 resources. Petitioner Egger objected to the Project before its approval.

17 8. Petitioner PETER LACQUES is a resident of Fairfax, in Marin County, where he is a
18 Fairfax Planning Commissioner. Petitioner Lacques uses the land, water and other environmental
19 resources of Marin and Sonoma Counties. Petitioner Lacques will be adversely affected and injured by
20 the Board's approval of the desalination Project and failure to adopt an adequate EIR, and by the Project's
21 consequent unexamined and inadequately mitigated impacts on public health, land use, water and air
22 quality, energy usage, greenhouse gas emissions, and other environmental resources. Petitioner Lacques
23 objected to the Project before its approval.

24 9. Petitioners have exhausted their administrative remedies by objecting to the Board's
25 approval of the Project prior to the close of the Board's public proceedings thereon. The violations of
26 CEQA and the other violations of law alleged herein were presented to the Board orally or in writing
27 during the public comment period on the Project. Petitioners gave prior notice of this proceeding to the
28 Board and to the California Attorney General in accordance with applicable law, as documented herein

1 and in Petitioners' Proof of Service of Petitioners' Notice of Intent to File CEQA Action and Notice to
2 California Attorney General filed concurrently herewith.

3 10. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law within
4 the meaning of CCP section 1086, in that the Board's approvals of the Project are not otherwise
5 reviewable in a manner that provides an adequate remedy.

6 11. The Board's approvals of the Project challenged herein will result in irreparable harm to
7 petitioners because the Project and its implementation will cause significant adverse environmental
8 impacts including induced population growth, contamination and disruption of San Francisco Bay waters,
9 impaired reliability and safety of the public's water supply, harm to aquatic animals and plants, excessive
10 energy consumption, air pollution, global warming, and scenic degradation. The Project poses conflicts
11 with several local county and city general plans. These impacts will harm petitioners' use and enjoyment
12 of the public's environmental resources including clean and safe water and air, open space preservation,
13 and a healthy San Francisco Bay. Such environmental harm is unlawful and irreparable. Therefore
14 petitioners are entitled under CCP 526 to this Court's injunctive relief.

15 12. Petitioners contend that the Board's approvals of the Project violate CEQA, and other
16 applicable laws in the respects alleged herein. Petitioners are informed and believe that the Board
17 disputes this contention. Therefore petitioners are entitled under CCP 1060 to this Court's declaration
18 resolving such dispute.

19 13. Respondent MARIN MUNICIPAL WATER DISTRICT BOARD OF DIRECTORS is the
20 elected five-member governing body of the Marin Municipal Water District, a public agency formed
21 pursuant to Water Code sections 71000 *et seq.* and 72750 *et seq.* On February 4 and August 19, 2009,
22 respectively, the Board approved the Project by adopting Resolution Nos. 7869 and 7925. On August 20,
23 2009, the Board filed a Notice of Determination with the Marin County Clerk purporting to certify the
24 Board's compliance with CEQA in approving the Project. The Board is charged by law with assuring
25 compliance with the requirements of CEQA, CCP sections 1085 and 1094.5, and other applicable laws in
26 approving the Project. The Board failed to comply with these laws.

27 14. Petitioners are unaware of the true names and capacities of respondents Does I-XX, and
28 therefore sue such respondents herein by fictitious names. Petitioners are informed and believe, and

1 based on such information and belief allege, that the fictitiously named respondents are also responsible
2 for approval of the Project and its threatened injury to petitioners. When the true identities and capacities
3 of these respondents have been determined, petitioners will, with leave of the Court if necessary, amend
4 this Verified Petition to insert such identities and capacities.

5 15. Petitioners are not presently aware of any real parties in interest, and therefore do not name
6 any such parties by name. Out of an abundance of caution, petitioners name as DOES XXI-L any
7 hereinafter discovered parties who claim a direct financial or other interest in the Board's approval of the
8 Project. If and when the true identities and capacities of these real parties in interest have been
9 determined, petitioners will, with leave of Court if necessary, amend this Verified Petition to insert such
10 identities and capacities.

11 EXHAUSTION OF REMEDIES

12 16. Petitioners have exhausted their administrative remedies by objecting to the Board's
13 approval of the Project prior to the close of the Board's public proceedings thereon. The violations of
14 CEQA and other laws alleged herein were presented to the Board orally or in writing during the public
15 comment period on the Project.

16 JURISDICTION AND VENUE

17 17. This Court has jurisdiction of this proceeding pursuant to CCP sections 526, 1060, 1085
18 and 1094.5, PRC sections 21168 and 21168.5, and article VI, section 10 of the California Constitution.

19 18. Venue is proper in this Court pursuant to CCP sections 393, 394 and 395.

20 19. This petition is timely filed within 30 days of the Board's filing and posting of its Notice
21 of Determination for the Project with the Marin County Clerk on or after August 20, 2009, in accordance
22 with PRC section 21167.

23 FACTUAL BACKGROUND

24 20. In 1990 MMWD began performing studies to develop possible plans for sources of
25 potable water to meet potential increases in future water demand. Two options were analyzed in an EIR
26 certified by MMWD in 1991. The first option was a desalination plant with a theoretical capacity to
27 create 10,000 acre feet per year ("AFY") of potable water. The second option proposed installing an
28 eight mile pipeline to convey water from the Russian River to be purchased from the Sonoma County

1 Water Agency. The Board chose the pipeline option, and put an \$80 million bond measure on its
2 electors' ballot (Measure W) in November 1991. That ballot measure failed. The following year,
3 MMWD placed a \$37.5 million bond measure (Measure V) to fund conservation efforts rather than new
4 sources of water, on the ballot, and it was successful.

5 21. Even though the people of Marin County had clearly shown a preference at the ballot box
6 for water conservation over costly, growth-inducing, polluting and energy-intensive desalination, in 2007
7 the MMWD nonetheless commissioned a new study on desalination as an additional future water supply,
8 which subsequently lead to MMWD's proposal for the Project.

9 22. In August 2003 MMWD published a Notice of Preparation of an EIR for the Project.

10 23. From March 2005 to April 2006 MMWD conducted a Seawater Desalination Pilot
11 Program to update the pilot work done in 1990.

12 24. MMWD published a Draft Environmental Impact Report ("DEIR") for the Project on
13 November 19, 2007, which was then circulated for public review. The public comment period on the
14 DEIR was held open until March 28, 2008.

15 25. During the public comment period well over 100 individuals and organizations including
16 several petitioners voiced their opinions on and objections to the Project.

17 26. At MMWD's December 17, 2007 hearing on the Project, petitioner Egger, on behalf of
18 himself and NCRA, and other petitioners spoke out against the Project. They raised concerns over the
19 Project's energy consumption and impacts on global warming, removal of up to 10 billion gallons of
20 water from the Bay on an annual basis, growth-inducing effects, and potential cumulative impacts if other
21 foreseeable desalination plants are built on San Francisco Bay.

22 27. Thereafter, at MMWD's January 31, 2008 public hearing on the Project, petitioner Egger
23 individually and on behalf of NCRA, and other petitioners again voiced their concerns over the Project's
24 excessive energy use, growth-inducing impacts and other environmental impacts.

25 28. MMWD released the Final Environmental Impact Report ("FEIR") for the Project on
26 December 19, 2008 and publicly distributed the FEIR on December 23, 2008.

27 29. On February 4, 2009 the Board adopted Resolution No. 7869, certifying the FEIR.

28 30. On June 24, 2009 the Board held a public hearing during which petitioner Peter Lacques

1 and other petitioners objected to the Project on the ground it needlessly risked water quality and other
2 natural resources and failed to accord adequate consideration to water conservation, the public's long-
3 preferred approach to addressing potential water shortages.

4 31. In July and August, 2009, the Board held further hearings on the Project at which several
5 petitioners voiced their continuing concerns that the Project posed risks to public health and safety and
6 other environmental impacts that had not been adequately addressed.

7 32. On August 19, 2009 the Board adopted Resolution No. 7925, approving the Project,
8 adopting findings, a statement of overriding considerations, and a mitigation monitoring and reporting
9 program.

10 33. MMWD filed its Notice of Determination finding the FEIR complied with CEQA on
11 August 20, 2009.

12 34. The Project consists of a sea-water desalination plant that will, upon completion, have the
13 capacity to take in salt water and initially produce 5 MGD of potable water. The 5 MGD plant will be
14 built with oversized infrastructure to support future expansions of its output up to 15 MGD of potable
15 water. This latter quantity of water is sufficient to support a population growth of 85,000 people.

16 35. To output 5 MGD of potable water, the plant will take in roughly 10 MGD of raw
17 seawater from San Rafael Bay and treat it through a reverse osmosis process intended to remove salts,
18 other impurities and toxins. Theoretically, the reverse osmosis process results in two types of waste: the
19 condensed brine from the seawater, and the insoluble sludge. The brine will be discharged back into the
20 bay through the outfall operated by the Central Marin Sanitation Agency ("CMSA") after being combined
21 with treated sewage effluent, and the insoluble sludge will be hauled by truck to the Redwood Landfill in
22 Marin County. According to the FEIR and depending on the plant's output, the Project would discharge
23 from 5.4 to 15 MGD of brine into San Rafael Bay every day, and 3.1 to 27.0 tons of dewatered sludge
24 would be trucked off-site to the landfill every day. The Project's reverse osmosis process is subject to
25 equipment failure, operator error and other causes of failure including seismic shaking, liquefaction and
26 sabotage. The reverse osmosis process does not guarantee that no impurities, toxins, pathogens or other
27 harmful contaminants from the nearby sewage outfall or elsewhere may not enter the public water supply.

28 36. The Project will also generate backwash water, spent cleaning compounds, liquids from

1 sludge dewatering and sanitary wastewaters, all of which may contain concentrated pollutants and or
2 other harmful contaminants which will be discharged into the sewer. The Project will also create
3 additional solid wastes, including marine residues from intake-pipe cleaning.

4 37. In addition to the desalination plant itself, the Project will require at least two additional
5 reaches of pipeline, at least two new pumping stations, and at least three new storage tanks. An
6 additional pipeline and pumping station will be required if and when the plant is expanded beyond 5
7 MGD. The intake valve for the raw water will be located at the end of the Marin Rod and Gun Club Pier,
8 which will have to be rebuilt to satisfy the structural requirements of the Project.

9 38. Other structures and improvements will also be necessary for the Project, including an
10 equipment building, a 3,000 sq. ft. office/laboratory space, a 3,000 sq. ft. warehouse/workshop space, a
11 parking lot, a power transmission substation and an operations and control system.

12 39. The Project may require Pacific Gas & Electric Company ("PG&E") to replace 15 power-
13 line support poles with taller steel poles and replace the existing conductors to provide adequate power to
14 the Project.

15 40. The offshore components of the Project will require removing the existing wooden pier,
16 driving 175 concrete piles into sub-marine bedrock, installing a new concrete pier and installing an intake
17 structure at the end of the pier.

18 41. The Project will be the largest consumer of electricity in Marin County, using as much as
19 76,650 KWh/yr during drought conditions, resulting in a quadrupling of MMWD's current energy usage.
20 This substantial increase in energy usage will require substantial consumption of fossil fuels, and
21 contribute significantly to greenhouse gas emissions and global warming, impacts the EIR fails to
22 adequately address, much less mitigate.

23 **FIRST CAUSE OF ACTION**

24 **(Writ of Mandate to Set Aside Project Approval as Contrary to California Environmental Quality
25 Act and Declaratory and Injunctive Relief to Declare Unlawful and Restrain Project Approval and
Implementation)**

26 **(Alleged by All Petitioners)**

27 42. The paragraphs set forth above are realleged and incorporated herein by reference.

28 43. In approving the Project and certifying the EIR, the Board proceeded in excess of its

1 jurisdiction and abused its discretion in violation of CEQA, PRC sections 21000, *et seq.*, by failing to,
2 *inter alia*:

3 a. provide an adequate project description as required by CEQA Guidelines [14
4 C.C.R.] section 15124;

5 b. provide an adequate description of the environmental setting as required by CEQA
6 Guidelines section 15125;

7 c. provide an adequate discussion of the Project's environmental impacts as required
8 by CEQA Guidelines section 15126;

9 d. adequately disclose, discuss, and mitigate the Project's substantial adverse impacts
10 on aesthetics, air quality, biological resources, energy usage, geology, soils and seismicity, water quality,
11 land use and planning, public health and safety, public services and utilities and recreation, contrary to
12 CEQA Guidelines section 15126.2;

13 e. adequately disclose and address the Project's growth-inducing and cumulative
14 effects, specifically the Project's significant and cumulatively considerable impacts on greenhouse gas
15 emissions, contrary to CEQA Guidelines sections 15126(d), 15126.2(d), 15130 and 15144;

16 f. provide specific, certain and enforceable mitigation measures, impermissibly
17 deferring the development and assessment of such measures to the future, contrary to CEQA Guidelines
18 section 15126.4;

19 g. consider a reasonable range of alternatives and adequately discuss alternatives as
20 required by CEQA Guidelines section 15126.6; and

21 h. adopt findings demonstrating that it is infeasible to mitigate to insignificance the
22 Project's significant impacts on the environment, and by adopting findings and a Statement of Overriding
23 Considerations in this regard that are contrary to the evidence in the Board's administrative record, in
24 violation of PRC sections 21002, 21002.1 and 21081, and CEQA Guidelines sections 15091, 15092 and
25 15093.

26 44. For the foregoing reasons, among others, the Board's approval of the Project violates the
27 requirements of CEQA and the CEQA Guidelines, exceeds the Board's jurisdiction, constitutes a
28 prejudicial abuse of discretion, and is contrary to the procedures required by law. Accordingly, the

1 Board's approval of the Project is invalid and must be set aside.

2 **SECOND CAUSE OF ACTION**

3 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside Project Approval as Contrary to**
4 **the San Rafael City General Plan, the Marin Countywide Plan and the Town of Tiburon General**
5 **Plan)**

6 **(Alleged by All Petitioners)**

7 45. The paragraphs set forth above are realleged and incorporated herein by reference.

8 46. MMWD is a "special district" within the meaning of Government Code section 65401 and
9 a "local agency" within the meaning of Government Code section 65402(c), and subject to the
10 requirements of the latter section that it not acquire or dispose of real property, nor construct or authorize
11 a public structure, in any county or city which has adopted a general plan applicable to such property or
12 structure "until the location, purpose and extent of such acquisition, disposition, or such public building
13 or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to
14 conformity with said adopted general plan or part thereof."

15 47. The Board proceeded in excess of its jurisdiction and abused its discretion in purporting to
16 approve the Project because the Project has not been submitted to the planning bodies of the cities of San
17 Rafael and Tiburon, and of the County of Marin, for approval, and violates the San Rafael General Plan,
18 the Marin Countywide Plan and the Town of Tiburon General Plan by:

19 a. creating new visual impacts interrupting vistas, in violation of Marin Countywide
20 Plan Goal DES-4, Policy DES-4.1, and Implementing Program DES-4.b;

21 b. installing two 2-million gallon water storage tanks on the north side of San Quentin
22 Ridge measuring 39 feet high and 110 feet in diameter in violation of San Rafael General Plan Policies
23 NH-69, NH-99, NH-70, and CD-6; and

24 c. installing a water storage tank on ridge-top open space owned by the Town of
25 Tiburon and restricted by deed to open space use, in violation of Town of Tiburon General Plan Policies
26 OSC-4 and LU-11 and Goals LU-E and LU-F.

27 48. The Board's action in approving the Project without first submitting the Project to the
28 planning bodies of the cities of San Rafael and Tiburon and the County of Marin for approval, and in
violation of the general plans of those agencies and thus of the foregoing planning and zoning laws,

1 exceeds its jurisdiction and constitutes a prejudicial abuse of discretion. Accordingly, the Board's
2 approval of the Project is contrary to law and invalid and should be set aside.

3 **THIRD CAUSE OF ACTION**

4 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside
5 Project Approvals as Contrary to C.C.P. §§ 1085 and 1094.5)**

6 **(Alleged by All Petitioners)**

7 49. The paragraphs set forth above are realleged and incorporated herein by reference.

8 50. The Board proceeded in excess of its jurisdiction and abused its discretion in purporting to
9 approve the Project and certify its EIS because such approvals violate CCP sections 1085 and 1094.5 in
10 the following respects, among others:

11 a. such approvals were not granted in accordance with the procedures required by
12 law;

13 b. such approvals were not based on the findings required by law; and

14 c. such approvals were not based on, or were contrary to, the evidence in the record
15 before the Board.

16 51. The Board failed to proceed in the manner required by law in the following respects,
17 among others:

18 a. the Board violated CEQA as alleged hereinabove; and

19 b. the Board approved a Project that violates the San Rafael General Plan, the Marin
20 Countywide Plan and the Town of Tiburon General Plan without first submitting the Project to the
21 planning bodies of those agencies for their approval.

22 52. The Board's actions in approving the Project without complying with the procedures
23 required by CCP sections 1085 and 1094.5 exceeded the Board's jurisdiction and constitute a prejudicial
24 abuse of discretion, and therefore are invalid and must be set aside.

25 **RELIEF REQUESTED**

26 WHEREFORE, petitioners pray for judgment and further relief as follows:

27 1. For a peremptory writ of mandate directing the Board to vacate and set aside its approvals
28 for the Project including but not limited to Resolution Nos. 7869 and 7925 and all related findings and

1 approvals because such approvals violate the California Environmental Quality Act and Code of Civil
2 Procedure sections 1085 and 1094.5 in the respects alleged hereinabove;

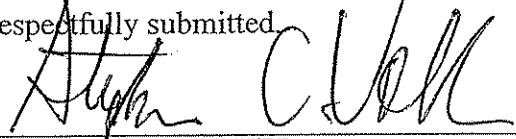
3 2. For declaratory relief declaring unlawful, and for interlocutory and permanent injunctive
4 relief restraining the Board from approving and implementing, any actions to carry out the Project
5 pending, and following, the hearing of this matter;

6 3. For a peremptory writ of mandate directing the Board to suspend all activity under the
7 approvals for the Project that could result in any change or alteration in the physical environment until the
8 Board has taken all actions necessary to bring its approvals of the Project into compliance with the laws
9 whose violation is alleged herein;

10 4. For an award to petitioners of their attorneys' fees and costs of suit (including all
11 necessary and reasonable litigation costs) as authorized by Code of Civil Procedure sections 1021.5, 1032
12 and 1033.5; and

13 5. For such other equitable or legal relief as the Court deems appropriate.

14 Dated: September 21, 2009

Respectfully submitted,


STEPHAN C. VOLKER
Attorneys for Petitioners and Plaintiffs NORTH COAST
RIVERS ALLIANCE, LARRY ROSE, M.D., LAWRENCE
BRAGMAN, RITCHIE COOK, FORD GREENE, SUSAN
KIRSCH, FRANK EGGER, and PETER LACQUES

28

VERIFICATION

1
2 I, Stephan C. Volker, am the attorney for petitioners/plaintiffs in this action. I make this
3 verification on behalf of the petitioners/plaintiffs because such parties and their representatives are absent
4 from the county in which my office is located. I have read the foregoing Verified Petition for Writ of
5 Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The facts therein
6 are true and correct to the best of my knowledge and belief, and are based on documents within
7 respondent MMWD's record underlying its approvals of the Project herein challenged.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct, and that this Verification was executed in Oakland, California on September 21, 2009

10
11 
12 _____
STEPHAN C. VOLKER