

SEP 04 2019

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Executive Officer and Clerk
By: _____ Deputy

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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 IN AND FOR THE COUNTY OF VENTURA

8 CALIFORNIA WATER IMPACT
9 NETWORK

Petitioner

10 vs.

11 CITY OF SAN BUENAVENTURA

12 Respondent

13 UNITED WATER CONSERVATION
14 DISTRICT, CASITAS MUNICIPAL
15 WATER DISTRICT, CALLEGUAS
16 MUNICIPAL WATER DISTRICT,
17 METROPOLITAN WATER DISTRICT
18 OF SOUTHERN CALIFORNIA, DOES 1
19 THROUGH 50

Real Parties in Interest.

Case No.: 56-2019-00532905-CU-WM-VTA

**VERIFIED PETITION FOR WRIT
OF MANDATE**

*CEQA action subject to preference over
all other civil actions per Public
Resources Code § 21167.1*

(Code Civ. Proc., §§ 1085, 1094.5; Pub.
Res. Code, §§21000, et seq.)

23 Petitioner California Water Impact Network (“petitioner”) prays for this Court to
24 issue its writ of mandate directed against the City of San Buenaventura (“Ventura” or
25 “City”) based on the following allegations:
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1 Nonetheless, Ventura evaded these problems, seeking to enable delivery of SWP water to
2 the City, direct delivery of SWP water to the United Water Conservation District
3 (“United”), and direct or in-lieu delivery of SWP water to Casitas Municipal Water District
4 (“Casitas”). Deliveries through the project’s pipeline would also require wheeling
5 agreements with the Calleguas Municipal Water District (“Calleguas”) and the
6 Metropolitan Water District of Southern California (“Metropolitan”).

7
8 4. Ventura’s project, if built and operated, would facilitate dangerous and costly
9 dependence on unreliable and oversubscribed water allocations from the SWP. Local
10 dependence on the SWP through Ventura’s project would create a new problem to be
11 overcome, rather than meeting local needs relating to water supply, water quality, and the
12 environment. SWP water available through the project’s facilities, if any, would originate
13 in northern California and require export from the Sacramento-San Joaquin Delta (“Delta”),
14 which the California Legislature has identified “as both the hub of the California water
15 system and the most valuable estuary and wetland ecosystem on the west coast of North
16 and South America.” (Wat. Code, § 85002.) Recognizing that existing Delta policies were
17 “not sustainable,” Wat. Code, § 85001, subd. (e), the Legislature nearly a decade ago
18 required improvement in regional self-reliance, and mandated a statewide policy to
19 “reduce reliance on the Delta in meeting California’s future water supply needs through a
20 statewide strategy of investing in improved regional supplies, conservation, and water use
21 efficiency.” (Wat. Code, § 85021.) It is “the policy of the state to recognize and protect
22 those resources of the Delta for the use and enjoyment of current and future generations.”
23 (Pub. Resources Code, § 29701.) Nonetheless Ventura certified its FEIR and proceeded to
24 final approval of the project to facilitate local reliance on Delta exports through the SWP
25 for the City and two nearby water districts, despite having excluded analysis of local
26 alternatives to improve water reliability.

27 5. As finally reviewed and approved by Ventura, the project seeks to move more than
28 water; it would move backward in time to a bygone era that failed to ensure accountability
against degradation of the Delta and other protected ecosystems. Local decision-makers

1 addressing water supply, such as Ventura in its project decision, must instead focus on
2 ensuring integrated assessment of local supply and conservation options, rather than
3 excluding local alternatives prior to approving and investing in new SWP water supply
4 infrastructure. The costs of the project, including Ventura’s initially estimated \$50 million
5 and additional, undisclosed long-term risks from local dependence on the SWP system,
6 would likely cripple Ventura’s ability to explore and develop sustainable local and regional
7 solutions, hardening its dependence on vulnerable watersheds not reliably available to meet
8 local or regional needs.

9 6. Ventura’s proposed SWP interconnection, even if built and operated, could not
10 reliably ensure water deliveries for the City and nearby water districts even as a backup
11 source. The project is likely to entrench and compound the SWP’s chronic problems with
12 overreliance on illusory “paper water” allocation amounts, which exist chiefly as an
13 accounting tool in long-term SWP contracts and cannot be reliably delivered. Since the
14 historic capability of the SWP is only half or less of the SWP’s aggregate allocation
15 amounts, courts have long recognized the risks of local action based on assumptions about
16 paper water, including the facilitation of project decisions “dependent on water worth little
17 more than a wish and a prayer.” (*Planning and Conservation League v. Department of*
18 *Water Resources* (2000) 83 Cal.App.4th 892, 908, 915.)

19 7. In certifying the FEIR and approving the project, Ventura failed to heed major
20 criticisms from the petitioner, public agencies and other members of the public. Major
21 errors in the FEIR and approval include, but are not limited to, the following:

22 • Ventura prejudicially disconnected its final review and decision on the State Water
23 Interconnection Project from its own separate review of local approaches to water
24 reliability. Ventura avoided requests for an integrated assessment of local alternatives
25 before proceeding to finality on the interconnection.

26 • Ventura’s findings, certified FEIR and other approval documents fail to disclose that
27 in March 2019, Ventura published a draft EIR for its separately reviewed Ventura Water
28 Supply Project, which confirmed that SWP water from the City’s State Water

1 Interconnection Project would be an unreliable source of supply.

2 • Ventura violated CEQA's requirement that an EIR must examine a reasonable range
3 of alternatives that would feasibly obtain most of the project objectives. Ventura refused to
4 study any local alternatives to the SWP Interconnection before final project approval.

5 • Ventura relied on a FEIR that selectively and inconsistently defined project
6 objectives to artificially truncate analysis of alternatives, and failed to confront the project's
7 own infeasibility to meet one or more of its listed project objectives.

8 • Ventura failed to accurately disclose and analyze the project's growth-inducing
9 impacts, including the consequences of building project infrastructure that removes
10 obstacles to growth. Ventura avoided that analysis even though the pipeline's capacity
11 would vastly exceed the city's own projections in operative planning documents of amounts
12 needed to replace current shortfalls or accommodate projected demand.

13 • Ventura failed to disclose and analyze significant environmental impacts from the
14 project's hardened local reliance on water resources from the Delta, and construction and
15 operation of a pipeline expressly designed to facilitate that reliance.

16 • Ventura failed to analyze the consequences of foreseeable efforts to temporarily
17 utilize exported Delta water in the pipeline for local use even where doing so would violate
18 other requirements, such as those protecting watersheds of origin and the Delta, other
19 beneficial and instream uses, water quality, and public trust resources.

20 • Ventura failed to disclose and analyze project impacts stemming from pressure to
21 overuse other environmentally impacted water sources when dependence on SWP water
22 foreseeably fails to ensure reliable water deliveries. Compared with Ventura's road not
23 taken, an integrated assessment of local supply and conservation options prior to finally
24 approving this project costing \$50 million or more, the project is highly likely to place the
25 City in a weakened position to access lawful and environmentally responsible backup
26 sources during emergencies, water-short years, and other times when they are needed the
27
28

1 most.

2 • The FEIR and findings areas have other subject areas with sorely deficient analysis,
3 such as the sections addressing cumulative impacts, impacts on protected species. Ventura
4 avoided assessment of harm to disadvantaged communities stemming from the project's
5 combination of physical changes, unreliability and excessive costs. Ventura also failed to
6 analyze how the project's dependence on controversial, challenged and still-forthcoming
7 SWP contract amendments could compound the impacts and risks from the project.

8 • Based upon unlawful exclusion of analysis necessary to inform decision-makers and
9 the public in the manner CEQA requires, Ventura undermined the ability of its FEIR to
10 serve CEQA's purposes of informed self-government and public accountability.

11
12 8. Petitioner seeks a writ of mandate under California Code of Civil Procedure sections
13 1085, 1094.5, or both, directing Ventura to vacate its EIR certification and approval of the
14 project, and to revise its findings to comply with the law.

15 **PARTIES, JURISDICTION AND VENUE**

16 9. Petitioner California Water Impact Network ("CWIN") is a California non-profit
17 public benefit organization with its principal place of business in Santa Barbara, California.
18 CWIN's organization purpose is the protection and restoration of fish and wildlife
19 resources, scenery, water quality, recreational opportunities, agricultural uses, and other
20 natural environmental resources and uses of the rivers and streams of California, including
21 the Bay-Delta, its watershed and its underlying groundwater resources. CWIN has members
22 residing and utilizing water and environmental resources in the City of Ventura and the
23 County of Ventura, as well as elsewhere in California. CWIN's members use and enjoy the
24 Bay-Delta and inhabit and use its watershed. They use the rivers of the Central Valley and
25 the Bay-Delta for nature study, recreation, and aesthetic enjoyment.

26
27 10. Respondent City of San Buenaventura ("Ventura") is a municipal corporation
28 located within the County of Ventura in the State of California, as identified in section 100

1 of the Ventura Municipal Code. Ventura served as the CEQA lead agency for the project.
2 Ventura certified the FEIR on or about August 5, 2019. Ventura filed its Notice of
3 Determination recording its final approval of the project on August 6, 2019, which was also
4 filed in the State Clearinghouse on August 12, 2019. The FEIR prepared by Ventura as
5 CEQA lead agency must also serve as a legally adequate decision-making document for
6 any discretionary determinations of responsible and trustee agencies subject to the
7 requirements of CEQA.

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9 11. Real Party in Interest United Water Conservation District (“United”), which has its
10 headquarters in Santa Paula, California and serves an area in central Ventura County, is a
11 water conservation district formed under the Water Conservation District Law of 1931.
12 (Wat. Code, §§ 74000, et seq.) United manages groundwater use in eight basins along the
13 Santa Clara River in Ventura County, and provides imported water and other water
14 services. In approving the project, Ventura sought, in part, to enable direct delivery of SWP
15 water to United.

16 12. Real Party in Interest Casitas Municipal Water District (“Casitas”) is a municipal
17 water district formed under the California Municipal Water District Act of 1911, with its
18 headquarters in Oak View, California, an unincorporated community located in Ventura
19 County along the Ventura River between the towns of Casitas Springs and Mira Monte.
20 Casitas is a publicly owned water utility with a service area in western Ventura County. In
21 2017, Casitas also began operating and maintaining the City of Ojai’s water system. In
22 approving the project, Ventura sought, in part, to enable direct or in-lieu delivery of SWP
23 water to Casitas.

24 13. Real Party in Interest Calleguas Municipal Water District (“Calleguas”) is a
25 municipal water district formed under the California Municipal Water District Act of 1911,
26 with its headquarters in Thousand Oaks, California in Ventura County, which serves a
27 service area in southern Ventura County. Calleguas imports and distributes water from the
28 Metropolitan Water District of Southern California (“MWD”), which arrives via the SWP

1 from northern California. Deliveries through the pipeline proposed in Ventura's project
2 would require a wheeling agreement with Calleguas.

3
4 14. Real Party in Interest Metropolitan Water District of Southern California ("MWD")
5 is a state-chartered metropolitan water district, formed and subject to statutory authority
6 pursuant to the Metropolitan Water District Act (Stats. 1927, ch. 429, and amendments
7 thereto), codified at Water Code App., Ch. 109. MWD membership consists of 14 southern
8 California cities and 12 southern California water agencies. MWD, whose headquarters is
9 in the City and County of Los Angeles, has a service area including parts of Ventura, Los
10 Angeles, Orange, San Diego, Riverside and San Bernardino Counties. Deliveries through
11 the pipeline proposed in Ventura's project would require a wheeling agreement with MWD.

12 15. Does 1 through 50, inclusive, may have an interest or claim to the project whose
13 specific details are not presently known to the petitioner and plaintiffs. Their true names
14 and capacities, whether in individual, corporate, associate, governmental, or other
15 designations, are not presently known to plaintiffs and petitioner, and are therefore
16 referenced here by fictitious names. Should their true names and capacities later be
17 ascertained, petitioner will seek to amend this petition and complaint to identify their true
18 names and capacities.

19
20 16. Ventura's NOD did not specifically identify any real parties in interest pursuant to
21 Public Resources Code section 21167.6.5. Nonetheless, to avoid any unnecessary dispute
22 over which, if any, entities identified in the NOD's project description may fall within that
23 statutory definition, petitioner in an abundance of caution has named each the entities
24 identified herein in this petition (United, Casitas, Calleguas, and MWD) as real parties in
25 interest.

26 17. This civil action is brought pursuant to Code Civ. Proc., §§ 1085, and 1094.5; and
27 CEQA, Public Resources Code section 21000 *et seq.*
28

1 18. Pursuant to Code of Civil Procedure sections 393, 394 and 395, venue for this action
2 is appropriate in Ventura County Superior Court. The City of San Buenaventura is a
3 municipal corporation located within Ventura County, in which its principal offices are also
4 located. The affirmative acts the City recorded in its Notice of Determination resulted in
5 wrongs that were felt, at least in large part, in Ventura County.

6
7 19. Petitioner has exhausted all administrative remedies by submitting written comments
8 during the project approval and EIR processes preceding Ventura's certification of the EIR
9 and approval of the project. All issues raised in this petition and complaint were raised by
10 petitioner, or by public entities, members of the public, or both, prior to Ventura's final
11 decision on the project recorded in the Notice of Determination.

12 20. Petitioner has complied with Public Resources Code section 21167.5 by prior
13 service of a written notice upon Ventura indicating its intent to file this petition.

14
15 21. Petitioner has complied with Public Resources Code section 21167.7 and Code of
16 Civil Procedure section 388 by serving a copy of this petition on the Attorney General.
17 Petitioner brings this action on behalf of its members and members of the public, to enforce
18 important rights affecting the public interest.

19
20 22. Petitioner elects to prepare the record of proceedings in the above-captioned
21 proceeding or to pursue an alternative method of record preparation pursuant to Public
22 Resources Code section 21167.6(b)(2).

23 **PROCEDURAL HISTORY**

24
25 23. On January 23, 2017, the Ventura City Council approved an agreement with
26 Kennedy/Jenks Consultants to prepare an alignment study and corresponding documents
27 for the State Water Interconnection Project.
28

1 24. Ventura issued its Notice of Preparation (NOP) of its Environmental Impact Report
2 for the State Water Interconnection Project on February 28, 2018. Ventura held a public
3 scoping meeting on March 15, 2018 and received oral and written scoping comments in
4 response to the NOP.

5
6 25. Kennedy/Jenks consultants completed its State Water Interconnection Alignment
7 Study during June 2018.

8
9 26. On February 19, 2019, Ventura filed its Notice of Availability of its Draft EIR for
10 the State Water Interconnection Project. The Draft EIR failed to address significant
11 concerns about the project raised during scoping review, and raised additional concerns
12 about the project's environmental consequences and areas of additional work still needed to
13 ensure compliance with CEQA and other laws. Ventura presented its Draft EIR to the City
14 Water Commission on February 26, 2019.

15 27. On February 19, 2019, Ventura initiated a public review and comment period with a
16 closing date of April 5, 2019. During the public comment period, CWIN and other
17 commenters raised major additional concerns about the project and its environmental
18 review, which Ventura failed to address as required by CEQA when it certified the EIR and
19 rendered its final project approval.

20
21 28. On April 3, 2019, CWIN submitted detailed comments on Ventura's Draft EIR for
22 the project. Among other deficiencies, CWIN's letter analyzed the Draft EIR's faulty
23 analysis of direct, indirect and cumulative impacts of the State Water Interconnection
24 Project. Those problems were compounded by the Draft EIR's avoidance of much of the
25 SWP and Delta context surrounding the proposed project, including failure to confront
26 chronic problems such as oversubscription of the SWP and the Central Valley Project, and
27 the resulting decimation of the Delta ecosystem.

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1 29. CWIN’s comment letter on the Draft EIR also provided detailed analysis criticizing
2 other deficiencies, such as the evasion of meaningful analysis of growth-inducing impacts
3 and the refusal to study project alternatives including local water supply and conservation
4 options. CWIN concluded that an integrated approach to local water supply and
5 conservation would “prove less expensive and more reliable than the financial burdens of
6 SWP management/maintenance and its inability to deliver water in times of drought.”
7 Reinforcing its criticism of the project and its EIR analysis, CWIN assessed other
8 experiences with SWP-related overruns in infrastructure costs. CWIN also concurrently
9 submitted its own detailed study, *The Santa Barbara Report*, detailing analogous major
10 problems with excessive SWP costs and poor reliability in Santa Barbara County, which
11 followed after that county approved infrastructure physically connecting to SWP resources
12 and facilitating reliance on the SWP for local water supply.

13 30. Ventura released its proposed FEIR on June 18, 2019, and held a public meeting in
14 which staff presented the Draft EIR to the City’s Water Commission on June 25, 2019.
15 Ventura’s FEIR, with a published date of July 2, 2019, failed to correct major deficiencies
16 CWIN and other commenters identified in the Draft EIR, including those detailed earlier in
17 this petition.

18
19 31. In a letter to Ventura dated July 15, 2019, CWIN explained that due to serious
20 deficiencies in the FEIR and major unstudied risks, EIR approval of the SWP project must
21 be denied, or at minimum delayed. Critical deficiencies in the EIR included the following,
22 among others:

23 • The FEIR failed to mention that in a related environmental review of a project the
24 City segmented from review of the SWP interconnection, Ventura had already conceded
25 the unreliability of the proposed SWP interconnection. In its March 2019 Draft EIR for
26 the Ventura Water Supply Project, Ventura recognized that, although “pursued in parallel”
27 with that local supply project, the SWP Interconnection “is not considered a reliable,
28 consistent water supply.” *Id.* at 5-4 (emphasis added).

- 1 • The FEIR tautologically defined project objectives to exclude alternatives not
2 requiring dependence on vulnerable water imports from the Delta.
- 3 • The FEIR failed to disclose that the SWP interconnection project failed to meet one
4 or more of own project objectives, basing water reliability and quality on hardened reliance
5 on “paper water” from the SWP.
- 6 • The FEIR did not disclose that risks and costs from the interconnection project
7 depended heavily on controversial “contract extension” amendments, whose broad
8 relationship to project objectives and impacts remained unstudied.
- 9 • The FEIR deficiently analyzed other project impacts, such as growth-inducing
10 impacts and impacts on protected species.
- 11 • The FEIR circumvented analysis of economic dislocation linked to the physical
12 changes required under the project, and compounded by the high likelihood of cost
13 overruns. These connected changes posed important and still-unanalyzed risks for
14 disadvantaged communities.

15 32. In its July 15, 2019 letter, CWIN noted the irony that, as other southern California
16 communities, including Santa Monica, have reduced SWP dependence and taken
17 substantial steps forward to improve local water supply resilience, Ventura’s SWP
18 interconnection project would “place the city on a retrograde and dangerous path toward
19 increasingly unsustainable import dependence. Nothing in the City’s review of the project,
20 however, remotely suggests that they can afford to pay for both.” Prior to the Ventura’s
21 final decision to certify the EIR and approve the project, CWIN also submitted to the City
22 three articles authored by a CWIN member, respectively published in the Ojai Valley News
23 on February 1, 8 and 15, 2019. The articles were entitled (1) State Water Project is the
24 wrong solution for the Ojai Valley; (2) Ojai can learn from Santa Barbara’s mistakes with
25 state water; and (3) Connecting to state water does not guarantee Ojai any new water.

26 33. On August 5, 2019, the Ventura City Council held a public hearing to consider
27 certification of the EIR and final approval of the project. A member of CWIN spoke at the
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1 hearing, noting continuing deficiencies in the FEIR and recommending rejection of EIR
2 certification and the project.

3
4 34. Without addressing the criticisms provided in CWIN's July 15, 2019 letter or in the
5 three Ojai Valley News articles, and without addressing earlier deficiencies CWIN and
6 others had identified, Ventura certified the FEIR on August 5, 2019. The City recorded its
7 final approval of the project and all related approval documents in its Notice of
8 Determination, which Ventura filed on August 6, 2019. That notice was also marked as
9 filed in the State Clearinghouse on August 12, 2019.

10 **FIRST CAUSE OF ACTION:**
11 **VIOLATIONS OF CEQA**

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13 35. This cause of action incorporates all preceding paragraphs of this petition as if stated
14 herein. In certifying the Contract Extension Final EIR and rendering its final project
15 approval, respondent City of Ventura violated CEQA in at least the following respects:

- 16 • Improper Piecemealing of Project Analysis, and Failure to Consider the "Whole of
17 the Action" constituting the project.
- 18 • Failure to Provide a Stable, Complete and Consistent Project Definition.
 - 19 • Faulty Assessment of Project Baseline.
 - 20 • Faulty Assessment of No Project Alternative
 - 21 • Failure to Analyze a Reasonable Range of Alternatives
 - 22 • Faulty and Incomplete Assessment of Project Impacts
 - 23 • Faulty and Incomplete Assessment of Cumulative Impacts
 - 24 • Failure to Mitigate Significant Impacts
 - 25 • Failure to Recirculate EIR Despite Significant New Information
 - 26 • Failure to Adequately Respond to Comments
 - 27 • Approval of Defective Project Findings.
- 28

PRAYER FOR RELIEF

WHEREFORE, petitioner prays that this Court:

1. Issue its writ of mandate setting aside the orders of respondent, including its certification of the FEIR as adequate and its decision recorded in its Notice of Determination;

2. Enjoin Ventura’s project until and unless respondent Ventura lawfully approves the project in the manner required by CEQA;

3. Award petitioner costs, and attorneys’ fees under section 1021.5 of the Code of Civil Procedure; and

4. Grant such further relief that the Court deems just.

Dated: September 4, 2019

Respectfully submitted,

ROGER B. MOORE (SBN 159992)
LAW OFFICE OF ROGER B. MOORE

By: 
Roger B. Moore

Attorney for Petitioner California Water Impact Network

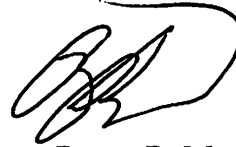
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VERIFICATION

I, Roger B. Moore, am counsel of record for petitioner California Water Impact Network. I am signing this verification due to petitioner's absence from the county, and because facts in the petition are within the knowledge of the undersigned counsel. I have read the foregoing petition and complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of September, 2019 in Oakland, California.



Roger B. Moore