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7
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SIERRA CLUB

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF IMPERIAL

12 SIERRA CLUB, a California nonprofit
13 public benefit corporation,
14
15 Petitioner and Plaintiff,
16
17 vs.
18 IMPERIAL IRRIGATION DISTRICT;
DOES 1 to 10, inclusive,
19
20 Respondent and Defendant,
21 BUREAU OF RECLAMATION, a
Federal agency; DOES 11 to 20,
inclusive,
Real Party in Interest

Case No.:

VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Code Civ. Proc. §§ 1085, 1094.5, &
1021.5; Pub. Res. Code § 21000, *et seq.*

22 Petitioner and plaintiff SIERRA CLUB hereby alleges as follows:

23 **INTRODUCTION**

24 1. Through this action, Petitioner SIERRA CLUB (“Petitioner”)
25 challenges the Imperial Irrigation District’s (“IID” or “Respondent”) participation in
26 the 2024-2026 Temporary Colorado River System Water Conservation Program (the
27 “Project”).

1 2. The Project consists of the Bureau of Reclamation’s (“Reclamation” or
2 “Real Party”) payment of program funds to IID in exchange for reductions by IID of
3 water diversions from the Colorado River at Imperial Dam. The water reductions
4 will be achieved through a combination of (1) increasing On-Farm Efficiency
5 Conservation Program (“OFECF”), (2) Deficit Irrigation Program (“DIP”), and (3)
6 Farm Fallowing Program (“FUFP”).

7 3. IID did not conduct its own environmental review under the California
8 Environmental Quality Act (“CEQA”). Instead, it relied on the environmental
9 review conducted by Reclamation pursuant to the National Environmental Policy
10 Act (“NEPA”). In particular, IID relied on Reclamation’s Environmental Assessment
11 and Finding of No Significant Impact (“FONSI/EA”) to conclude the Project will not
12 result in any significant environmental impacts.

13 4. Petitioner contends IID abused its discretion because its finding that
14 the Project will not cause significant environmental impacts is not supported by
15 substantial evidence and was based on an inadequate environmental review and
16 legal errors. Petitioner also contends that the IID failed to proceed in the manner
17 required by CEQA when it relied on Reclamation’s FONSI/EA because the
18 FONSI/EA’s does not satisfy CEQA’s procedural and substantive requirements.

THE PARTIES

19 5. Petitioner and plaintiff SIERRA CLUB is a Californian nonprofit
20 public benefit corporation. SIERRA CLUB is a national non-profit organization with
21 approximately 600,00 members nationally. Sierra Club is dedicated to exploring,
22 enjoying, protecting the wild places of the earth, to participating and encouraging
23 protection of the environment and restoration of the quality of natural and human
24 environments. Members of the San Gorgonio Chapter of the Sierra Club live, work
25 and recreate in and around the Salton Sea and depend on the continued
26 viability of the Salton Sea and its diverse species for their well-being.

1 6. Respondent and defendant IMPERIAL IRRIGATION DISTRICT
2 (“IID”) is a community owned water and power purveyor that administers more
3 than 2.6 million acre-feet-per year of vested water rights in the Imperial and
4 Coachella Valleys in California, including water subject to the Colorado River
5 Compact. IID was created by the vote of the people in 1911. IID has the authority to
6 enter into water conservation agreements in accordance with state and federal law.

7 7. Petitioner does not know the identity of DOES 1 to 10 but will amend
8 the Petition as required to specifically identify each such person or entity as a
9 respondent and defendant if the identity, interest, and capacity of such party, if
10 any, becomes known.

11 8. The Environmental Assessment/Finding of No Significant Impact
12 (“FONSI/EA”) that IID relied on when it approved the Project was prepared on
13 behalf of the BUREAU OF RECLAMATION (“Reclamation”), a Federal agency that
14 operates under the auspices of the United States Department of the Interior.
15 Reclamation, moreover, has approved this Project and has agreed to make
16 payments to IID to carry out the Project. On these bases, Petitioner alleges that
17 Reclamation is a Real Party in Interest.

18 9. Petitioner does not know the identity of DOES 11 to 20 but will amend
19 the Petition as required to specifically identify each such person or entity as a real
20 party in interest if the identity, interest, and capacity of such party, if any, becomes
21 known.

JURISDICTION AND VENUE

22 10. This Court has jurisdiction over this action pursuant to California
23 Code of Civil Procedure sections 1085 and 1094.5 and Public Resources Code section
24 21167. This Court has the authority to issue a writ of mandate directing
25 Respondent to vacate and set aside their approval of the Project under the Code of
26 Civil Procedure sections 1085 and 1094.5. This Court also has authority to award
27

1 attorney's fees and costs under Code of Civil Procedure section 1021.5 where, as
2 here, Petitioner seeks to enforce important rights affecting the public interest.

3 11. Venue for this action properly lies in the Superior Court of Imperial
4 County because Respondent is a community-owned utility located in Imperial
5 County and because the action concerns the approval of a Project affecting water
6 rights in Imperial County.

7 **PROCEDURAL ALLEGATIONS**

8 12. As set forth more fully below, Petitioner has performed any and all
9 conditions precedent to filing the instant action and have exhausted any and all
10 administrative remedies to the extent required by law, by *inter alia*, submitting
11 written comments to Reclamation and IID regarding the Draft FONSI/EA and
12 opposing the Project in written comments submitted to IID.

13 13. Petitioner has complied with the requirements of Code of Civil
14 Procedure section 388 by mailing a copy of the Petition and Complaint to the
15 Attorney General of the State of California.

16 14. In a letter dated September 12, 2024, and delivered by electronic mail,
17 Petitioner informed IID and Reclamation of their intent to commence litigation if
18 the IID did not agree to set aside its approval of the Project and finding of no
19 significant impact. A true and correct copy of that correspondence is attached hereto
20 as EXHIBIT A.

21 15. Petitioner has no plain, speedy, or adequate remedy in the ordinary
22 course of law unless this Court grants the requested writ of mandate to require
23 Respondent to comply with its duties and set aside IID's unlawful approval of the
24 Project. In the absence of such remedies, Respondent's approval will remain in
25 effect in violation of CEQA and other federal, state, and local laws.

26 16. If Respondent is not enjoined from approving the Project and
27 undertaking and/or permitting acts in furtherance thereof, Petitioner, its members,

1 and the public will suffer irreparable harm from which there is no adequate remedy
2 at law.

3 17. In pursuing this action, which involves enforcement of important
4 rights affecting the public interest, Petitioner will confer a substantial benefit on
5 the general public, including citizens of Imperial County, the area served by IID,
6 and the State of California, and therefore will be entitled to attorney’s fees and costs
7 pursuant to, *inter alia*, Code of Civil Procedure section 1021.5.

8 18. Petitioner brings this action in part pursuant to Public Resources Code
9 sections 21167, 21168, and/or 21168.5, Code of Civil Procedure section 1085, and/or
10 Code of Civil Procedure section 1094.5, which require that an agency’s approval of a
11 project be set aside if the agency has prejudicially abused its discretion. Prejudicial
12 abuse of discretion occurs either where an agency has failed to proceed in a manner
13 required by law or where its determination or decision is not supported by
14 substantial evidence. Respondent prejudicially abused their discretion because they
15 failed to proceed in the manner required by law and/or their findings and factual
16 conclusions are not supported by substantial evidence.

17 **PROJECT SETTING**

18 **A. Colorado River History**

19 19. Contrary to common misconception, the Salton Sea is not a man-made
20 lake but has existed at its current location for millions of years. (*See*, comments of
21 Jenny E. Ross, J.D. (“Ross Comments”), citing Ross, J.E. (2020). Formation of
22 California’s Salton Sea in 1905–1907 was not “accidental”.) Rather, when the
23 Colorado River flooded into the Salton Basin in the early twentieth century, it
24 simply expanded the size of a lake that already existed. (Ross Comments.) The
25 hydrologic connection between the Colorado River and the Salton Basin existed for
26 millions of years until the flow of the River was intentionally diverted in the
27 twentieth century. Now, thanks to human intervention, the Salton Sea has become
dependent on Colorado River wastewater returns for its continued existence. (*Ibid.*)

1 20. In the early twentieth century, the Boulder Canyon Project and the
2 construction of Hoover Dam (as well as other infrastructure) halted the flow of the
3 Colorado River into the Salton Basin. Cutting off the natural flow of the River into
4 the Salton Sea has resulted in a slow but steady decline of the water levels and near
5 catastrophic collapse of the important ecosystems the Salton Sea supports. The
6 continued existence of the Salton Sea has become dependent on Colorado River
7 wastewater flowing into the Salton Sea Basin.

8 21. The IID, the Coachella Valley Water District (“CVWD”) and Mexico
9 have been extracting Colorado River water for domestic and agricultural purposes.
10 Of the three, IID is by far the largest extractor of River water owing to its senior,
11 superior water rights which in turn means 85% of the Salton Sea’s inflow is from
12 IID’s wastewater flows.

13 22. Despite being artificially cut off from the Colorado River, the Salton
14 Sea retains its ecological significance because of the millions of migratory and
15 resident birds and hundreds of millions of fish that it supports. The Salton Sea is
16 ecologically significant not only because it provides essential habitat for state and
17 federally designated endangered and threatened species; it is also critically
18 important due to its location at the junction of the Pacific Flyway and
19 Intermountain West. Fossil records show that over 400 species of birds have relied
20 on lakes and wetlands in the Salton Basin for millions of years. Ironically, as inland
21 aquatic systems have declined in western United West, the Salton Sea’s has become
22 ecologically more critically important for the continued survival of many species.
(Ross Comments.)

23 23. The Colorado River and its tributaries provide water for 40 million
24 people and 80% of the Nation’s irrigated winter crops. (FONSI/EA at p. 6.) To
25 deliver Colorado River water within its service area, IID takes delivery of water
26 that is stored in and released from Lake Mead and diverts water at Imperial Dam.

1 (*Ibid.*) In total, IID owns, operates, and maintains 1,668 miles of canals, 1,175 miles
2 of which are concrete-lined or pipelined. (*Ibid.*)

3 24. Simultaneously with the development of the Project FONSI/EA,
4 Reclamation prepared a Near-Term Colorado River Operations Final Supplemental
5 Environmental Impact Statement (“SEIS”) in March 2024, for the 2007 Interim
6 Guidelines. This SEIS purported to analyze recent hydrological trends relevant to
7 the operation of critical elevation tiers in Lake Powell and Lake Mead. According to
8 IID’s own records, pursuant to the multiparty 2003 Quantification Settlement
9 Agreement (“QSA”) and the 2007 Colorado River Interim Operating Guidelines, IID
10 has conserved over 7.767 million acre-feet of Colorado River that the District would
11 otherwise have been legally entitled to use.

12 **B. IID Operation**

13 25. Importantly, the IID’s drainage operations include collection,
14 conveyance, measurement, and discharge of drainage water to the Salton Sea via
15 the New and Alamo Rivers and directly to the Salton Sea or its shoreline.
16 (FONSI/EA at p. 13.) IID’s drain system collects tailwater and tilewater from fields
17 within its service area, as well as operational discharge water from IID’s canal
18 system. (*Ibid.*)

19 26. “Tailwater is irrigation water that runs off the lower ends of fields and
20 is discharged into drains or is collected in sumps from which it is pumped to the
21 nearest drain, river, or directly to the Salton Sea or its shoreline.” (FONSI/EA at p.
22 13.)

23 27. “Tilewater is subsurface drainage water from irrigation water that
24 percolates through the soil during farming operations collected by the subsurface
25 tile drains and discharged into the nearest drain, river, or to a sump that pumps the
26 water directly to the Salton Sea or its shoreline.” (FONSI/EA at p. 13.)

27 28. “Operational discharge is water resulting from the operation of IID’s
canal system, including lateral fluctuations, carriage water, and delivery changes in

1 water orders. Operational discharges enter IID’s drain system and then flow to the
2 Salton Sea via the New and Alamo Rivers and directly to the Sea or its shoreline.
3 (*Id.*)” (FONSI/EA at p. 13.).

4 29. As human development across multiple states and Mexico has
5 continued to overtax Colorado River water, significant efforts were set in motion to
6 reduce California’s share of its annual allotment of 4.4 million acre-feet of Colorado
7 River water. In 2003, IID, CVWD, and the Metropolitan Water District of Southern
8 California (“Metropolitan”) entered into the Quantification Settlement Agreement
9 (“QSA”) and ,along with numerous other parties and various related agreements,
10 agreed to “provide a framework for conservation measures and water transfers for a
11 period of up to 75 years.” (Quantification Settlement Agreement Cases (2011) 201
12 Cal.App.4th 758, 773.)

13 30. In 2002, to facilitate the QSA, Reclamation certified a Final
14 Environmental Impact Report (“EIR”)/Environmental Impact Statement (“EIS”) for
15 the IID Water Conservation and Transfer Project and Habitat Conservation Plan
16 (“2002 EIR/EIS”). As for the present project, IID was designated as the state lead
17 agency under the CEQA. The 2002 EIR/EIS evaluated the environmental impacts of
18 conservation and transfer of up to 300,000 acre feet per year (“AFY”) of Colorado
19 River water to the San Diego County Water Authority (“SDCWA”) for a period of up
20 to 75 years. (FONSI/EA at p.15.)

21 31. In 2003, IID adopted an Addendum to the 2002 EIR/EIS to discuss
22 modification of certain mitigation measures referred to as “the Salton Sea Habitat
23 Conservation Strategies,” “including the temporary use of mitigation water,
24 modifications to the terms of the water transfer, and modifications to the
25 Endangered Species Act consultation strategies, allowing the water transfers to
26 occur through a Section 7 consultation rather than with a Section 10 process, which
27 would result in a Habitat Conservation Plan.” The FONSI/EA refers to the 2002

1 EIR/EIS and the 2003 Addendum collectively as the “QSA EIR/EIS.” The FONSI/EA
2 for the present Project incorporates the QSA EIR/EIS by reference.

3 32. Pursuant to the QSA, IID has implemented irrigation system
4 modifications including “canal lining and pipelining, the regulating reservoirs and
5 lateral interceptors with mid-lateral reservoirs, canal and lateral interties, canal
6 seepage recovery projects, and an operational discharge reduction program (e.g.
7 SCADA installation and monitoring, automation of lateral headings, computer data
8 collection). (IID 2024g.)” (FONSI/EA at p. 13.)

9 33. System modifications also include the On-Farm Efficiency
10 Conservation Program (“OFECP”) for participating agricultural water users which
11 is intended to implement conservation measures during crop seasons to create on-
12 farm conserved water and simultaneously promote water use efficiency.

13 34. Under the QSA, the IID will also continue to transfer about 500,000
14 AFY to Southern California urban uses for decades to come. To facilitate this, the
15 IID has undertaken various water conservation measures such as concrete lining of
16 water conveyance canals, and participation of nearly 70% of irrigated farmlands
17 within its jurisdiction in water-efficiency programs to decrease the amount of water
18 supplied to farms for irrigation in Imperial County. ((FONSI/EA at p. 12.)

19 **C. Impacts of Water Conservation on the Salton Sea**

20 35. The FONSI/EA for the present Project did not consider the impacts on
21 Colorado River “[b]ecause the SEIS considers effects of potential reduced flows in
22 the Lower Colorado River Basin resulting from system conservation agreements.
23 (FONSI/EA at p. 15.) The FONSI/EA incorporates the SEIS by reference to show
24 consistency with the near-term Colorado River operations because purportedly this
25 project contributes to the overall conservation goals of the SEIS. “This EA analyzes
26 the effects of the Proposed Action beyond the point of delivery.” (*Ibid.*)

27 36. As the amount of Colorado River water used for irrigation shrinks, so
too does the amount of water flowing into the Salton Sea along with Salton Sea

1 water levels. Reduced water levels and the corresponding precipitous rise in salinity
2 has induced near ecological collapse and revealed an increasing expanses of dry and
3 desiccated lakebeds that pollute the air with toxic and carcinogenic dust. Serious
4 environmental harm has resulted and continues to be caused at an alarming rate to
5 both the fish and birds dependent on the Salton Sea as well as the hundreds of
6 thousands of local residents—including many environmental justice communities—
7 that breath the air in the region.

8 37. Since the implementation of the QSA began in 2003, the Salton Sea’s
9 surface area has shrunk by 52 square miles (33,000 acres) and the lake elevation
10 has plummeted by more than 12 feet. (Ross Comments at p. 4.) The Salton Sea’s
11 salinity has also risen dramatically, killing hundreds of millions of fish and causing
12 some species to be completely extirpated. The combined effect of habitat
13 degradation and loss of millions of fish as a food source at the Salton Sea and
14 elsewhere in the area threatens the continued survival of millions of migratory
15 birds that depend on the Salton Sea to rest and feed during their biannual
16 migration. (*Ibid.*)

17 38. The deteriorating conditions at the Salton Sea Basin pose a serious
18 threat to the continued survival of federally and/or State listed endangered species,
19 such as the desert pupfish, which are endemic to the Salton Sea.

20 39. Even as IID has complied with the QSA mandates by conserving
21 millions of acre-feet of Colorado River water, the State of California has utterly
22 failed to fulfill its obligations to restore the Salton Sea or to undertake measures to
23 mitigate the serious harmful environmental impacts of the QSA water transfers.

24 40. In September 2003, the California Legislature passed Senate Bill
25 (“SB”) 277 (Fish & Game Code § 2930), otherwise known as the Salton Sea
26 Restoration Act. This enactment committed California to restore and permanently
27 protect the Salton Sea ecosystem and eliminate air quality impacts.

1 41. Also in September 2003, the California Legislature passed SB 654,
2 which explicitly limits the liability of IID and other QSA parties for harm to the
3 Salton Sea resulting from water transfers under the QSA and making the State of
4 California responsible for all Salton Sea restoration efforts.

5 42. Recognizing that the water conservation actions anticipated by the
6 QSA would result in “take” of protected species, the California Legislature added
7 section 2081.7 to the Fish and Game Code authorizing “take” of California protected
8 species within the Salton Sea ecosystem, but only where the impacts of all such
9 authorized “takes” are minimized and fully mitigated.

10 43. Since 2003, the IID has continued to substantially reduce its water
11 withdrawal from the Colorado River and transfer its water entitlements to
12 Southern California for urban use. IID has also implemented various mitigation
13 measures to reduce the adverse impacts on protected species. These mitigation
14 measures, however, were never intended to be a permanent solution; the statutory
15 responsibility for permanent restoration of the Salton Sea belongs to the State of
16 California.

17 44. While the IID was not specifically required to mitigate the impacts on
18 the fish and the birds that depend on the fish population, from 2003 to 2017, IID
19 was required to ensure large quantities of “mitigation water” flowed into the Salton
20 Sea to temporarily maintain water levels, minimize increase in salinity, and sustain
21 habitat for fish and piscivorous birds and other wildlife. These temporary measures
22 were intended to afford the State of California time to develop and implement a
23 permanent restoration plan.

24 45. The State, however, has not complied with its statutory mandate to
25 restore the Salton Sea, preserve wildlife including listed species, and protect the
26 local human population from the harmful effects of water transfers. In short,
27 California has failed to “minimize and fully mitigate” the impacts of the water
transfers away from the Salton Basin.

1 46. To address the State’s intransigence, IID initiated a proceeding at the
2 State Water Resources Control Board (“Water Board”) that could have jeopardized
3 the long-term viability of the QSA water transfers. As a direct consequence of the
4 proceedings before the Water Board, the California Department of Natural
5 Resources (“CNRA”) developed and agreed to implement a “10-Year Plan” to
6 immediately begin habitat restoration and implement dust mitigation measures.
7 Simultaneously, the CNRA committed to developing a long-term comprehensive
8 plan for the restoration of the Salton Sea as required by the Salton Sea Restoration
9 Act. The details of these agreements were codified in the Water Board Order WR
10 2017-0134 (“Stipulated Order”), which conditioned ongoing water transfers under
11 the QSA on CNRA’s achievement of specific milestones. These included annual
12 milestones for habitat creation and dust suppression projects on the exposed
13 lakebeds during 2018–2028. The Stipulated Order also required the CNRA to
14 “complete a long-term plan” for the restoration of the Salton Sea “no later than
15 December 31, 2022.”

16 47. The CNRA has violated the terms of the Stipulated Order since the
17 very beginning. CNRA failed to complete a long-term plan for the restoration of the
18 Salton Sea. Instead, the CNRA, through the so-called Salton Sea Management
19 Program or SSMP, prepared a report that purports to explore the same “options” for
20 restoration that have been discussed but not implemented for decades. The U.S.
21 Army Corps of Engineers has since taken over the evaluation of potential
22 restoration options and to that end, has commenced a multi-year feasibility study.

23 48. Since 2017, the CNRA has consistently failed to meet its “acreage”
24 requirements under the Stipulated Order. According to the CNRA Salton Sea
25 Management Program 2024 Annual Report (“2024 Annual Report”), the CNRA had
26 created 167 acres of habitat, but 5750 acres of habitat was mandated. This means
27 the CNRA created less than 3% of the fish and wildlife habitat mandated under the
Stipulated Order. (2024 Annual Report at p. 54.) Moreover, the entire 167 acres of

1 created habitat is within the footprint of a conservation project that was specifically
2 excluded from the Stipulated Order’s habitat requirement.

3 49. Similarly, CNRA’s own record shows by the end of 2023, it had
4 implemented only 40% of the dust suppression acreage it was required to create
5 under the Stipulated Order. (2024 Annual Report at p. 51.)

6 50. Based on the CNRA’s track record, there is no reason to believe it will
7 be able to meet its acreage creation requirements during the 2024-2026 life of the
8 Present Project.

9 51. In 2022, Department of the Interior, CNRA, IID, and the CVWD
10 signed the *Commitment to Support Salton Sea Management Related to Water*
11 *Conservation in the Lower Colorado River Basin* thereby collectively committing “to
12 addressing, managing, and mitigating impacts to the Salton Sea and surrounding
13 communities associated with additional water conservation activities.” (FONSI/EA
14 at p. 3.) According to the FONSI/EA, this agreement commits \$250 million to the
15 CNRA’s Salton Sea Management Program to support “expanded and accelerated
16 projects at the Salton Sea.” (*Id.* at p. 4.)

17 **D. Project Description**

18 52. On October 12, 2022, Reclamation sent a letter to parties having a
19 Colorado River water delivery contract or entitlement holders announcing funding
20 opportunities for voluntary participation in the new Lower Colorado River
21 Conservation Program (“October 2022 Letter”). (FONSI/EA at p. 3.) The October
22 2022 Letter requested proposals to reduce consumptive use of lower Colorado River
23 water. (*Ibid.*) In 2023, Reclamation announced an opportunity for interested parties
24 to submit proposals for long-term system efficiency improvements that would result
25 in additional system conservations. (*Ibid.*)

26 53. In May 2023, California, Arizona and Nevada submitted a joint
27 proposal to (“Lower Division Proposal”) to Reclamation to address ongoing water
deficit issues during 2024–2026 until a long-term plan is approved and is

1 implemented starting in 2027. The Lower Division Proposal included a commitment
2 by the three states to conserve a total of 3 million acre-feet by the end of 2026.

3 54. In response, IID submitted a conservation proposal for years 2023 to
4 2026. Implementation of the proposal requires a System Conservation
5 Implementation Agreement (“SCIA”) with Reclamation. IID and Reclamation
6 agreed to separate IID’s proposal into two parts: one SCIA for 2023 and one for
7 years 2024 through 2026. The present action only covers years 2024 to 2026. The
8 SCIA for 2023 resulted in the payment of \$70 million to the CNRA by Reclamation.
9 Final Approval of the Project at issue here will result in the payment of an
10 additional \$180 million to CNRA. The \$70 million payment to CNRA will be used to
11 pay for meeting CNRA’s existing unmet obligations pursuant its statutory mandate
12 and the Stipulated Order.

13 55. “Pursuant to the Proposed Action, IID would agree to conserve a target
14 volume of 250,000 AF, up to a maximum of 300,000 AF, of Colorado River water
15 each year from 2024 through 2026, targeting a cumulative total of 800,000 AF, but
16 no more than a cumulative maximum total of 900,000 AF, of water between 2024
17 and 2026, which will remain in Lake Mead to benefit the Colorado River System.
18 The terms and conditions of the Colorado River System water conservation and
19 funding are set forth in the SCIA.” (FONSI/EA at p. 17.)

20 56. The Proposed Action will provide the funding for IID’s implementation
21 of water conservation programs under which agricultural water users conserve
22 water, thereby reducing water diversions from the Colorado River at Imperial Dam.
23 The potential conservation programs include the following:

- 24 • On-Farm Efficiency Conservation Program (“OFEC”) or Simplified
25 OFEC,
- 26 • Deficit Irrigation Program (“DIP”), and
- 27 • Farm Unit Fallowing Program (FUF). (FONSI/EA at p. 18.)

1 57. Reclamation released a Draft EA for the Project on June 28, 2024,
2 thereby commencing the 30-day comment period. On August 12, 2024, Reclamation
3 issued a Final Environmental Assessment and Finding of No Significant Impact
4 (“FONSI/EA”).

5 58. On August 12, IID convened a hearing and approved the Project in
6 reliance on the FONSI/EA. IID’s findings in support of the Project approval state
7 that pursuant to CEQA Guidelines (Cal. Code Regs. tit. 14 § 15000, *et seq.*) section
8 15072, the IID used Reclamation’s environmental documents in place of a negative
9 declaration. Relying on CEQA Guidelines section 15225, the IID Board of Directors
10 concluded that the IID could use the FONSI/EA in place of a negative declaration
11 because the FONSI/EA meets the requirements of CEQA.

12 59. The Board of Directors of IID further concluded that, pursuant to
13 CEQA and CEQA Guidelines section 15074, and based on the whole record, “there
14 is no substantial evidence that the project will have a significant effect on the
15 environment ...”

16 60. The IID and Reclamation’s conclusion that the Project will not result in
17 significant environmental impacts is false and is not supported by substantial
18 evidence in the record or any adequate analysis. As set forth below, the FONSI/EA
19 does not meet CEQA standards and does not support a finding that Project will
20 result in less than significant environmental impacts. The evidence in the record
21 supports a finding that that the Project will foreseeably result in significant direct,
22 indirect, and cumulative impacts including impacts on the Salton Sea, its
23 tributaries and associated wetlands; fish and wildlife including protected species
24 that inhabit or rely on the Salton Sea and its tributaries; air quality; and climate
change.

25 61. Because the evidence in the record supports a fair argument that the
26 Project could result in significant environmental impacts, the IID was required to
27 prepare an Environmental Impact Report (“EIR”) in order to fully analyze Project

1 impacts and explore and analyze potentially feasible mitigation measures and/or
2 feasible alternatives.

3 CEQA FRAMEWORK

4 62. CEQA was enacted to ensure that public agencies transparently
5 consider the environmental implications of their actions before formal decisions are
6 made and that “the longterm protection of the environment shall be the guiding
7 criterion in public decisions.” (Pub. Res. Code § 21001, subd. (d).) “[T]he overriding
8 purpose of CEQA is to ensure that agencies regulating activities that may affect the
9 quality of the environment give primary consideration to preventing environmental
10 damage. CEQA is the Legislature's declaration of policy that all necessary action be
11 taken ‘to protect, rehabilitate and enhance the environmental quality of the state.’”

12 (Save our Peninsula v. Monterey County Board of Supervisors (2001) 87
13 Cal.App.4th 99, 117, citing Laurel Heights Improvement Assn. v. Regents of
14 University of California (1988) 47 Cal.3d 373, 392 & Pub. Res. Code § 21000.)

15 63. The environmental review process required by CEQA is intended to
16 assure the public that “the agency has, in fact, analyzed and considered the
17 ecological implications of its actions.” (Laurel Heights Improvement Ass. v. Regents
18 of the University of California (1988) 47 Cal.3rd 376, 392.) The function of the
19 environmental review is not merely to foster informed decision making; it is also to
20 inform the public so they can respond to an action with which they disagree. (*Ibid.*)

21 64. In light of CEQA’s important role in protecting the environment, the
22 California Supreme Court “has repeatedly observed that the Legislature intended
23 CEQA to be interpreted to afford the fullest possible protection to the environment
24 within the reasonable scope of the statutory language.” (Sierra Club v. County of
Sonoma (1992) 6 Cal.App.4th 1307, 1315.)

25 65. Environmental review under CEQA review involves a three-tiered
26 process. (Save Our Big Trees v. City of Santa Cruz (2015) 241 Cal.App.4th 694, 704
27 (“Save Our Big Trees”).)

1 The first tier requires an agency to conduct a preliminary
2 review to determine whether CEQA applies to a proposed
3 project. [citation omitted] If CEQA applies, the agency
4 must proceed to the second tier of the process by conducting
5 an initial study of the project. [citation omitted]. Among the
6 purposes of the initial study is to help “to inform the choice
7 between a negative declaration and an environmental
8 impact report (EIR).” [Citation omitted]. If there is “no
9 substantial evidence that the project or any of its aspects
10 may cause a significant effect on the environment,” the
11 agency prepares a negative declaration. (CEQA
12 Guidelines, § 15063, subd. (b)(2).) Alternatively, if “the
13 initial study identifies potentially significant effects on the
14 environment but revisions in the project plans “would
15 avoid the effects or mitigate the effects to a point where
16 clearly no significant effect on the environment would
17 occur” and there is no substantial evidence that the project
18 as revised may have a significant effect on the
19 environment, a mitigated negative declaration may be
20 used.” [Citation omitted]. Finally, if the initial study
21 uncovers “substantial evidence that any aspect of the
22 project, either individually or cumulatively, may cause a
23 significant effect on the environment” (CEQA Guidelines, §
24 15063, subd. (b)(1)), the agency must proceed to the third
25 tier of the review process and prepare a full EIR
26 (environmental impact report). [Citation omitted].

17 (Save Our Big Trees, *supra*, 241 Cal.App.4th at 704–705.)

18 66. Here, the IID concluded that there is no substantial evidence in the
19 record to show that the Project could result in any significant impacts on the
20 environment, either individually or cumulatively. This conclusion was based on the
21 analysis and reasoning in the FONSI/EA, which the IID concluded meets the
22 requirements of CEQA and can therefore be used in place of a negative declaration.
23 Accordingly, the Court must review the adequacy of the FONSI/EA based on
24 California’s extensive CEQA jurisprudence.

25 A negative declaration is ‘a written statement briefly
26 describing the reasons that a proposed project will not have
27 a significant effect on the environment and does not require
the preparation of an environmental impact report.’ (§
21064.) An MND is ‘a negative declaration prepared for a

1 project when the initial study has identified potentially
2 significant effects on the environment, but (1) revisions in
3 the project plans or proposals made by, or agreed to by, the
4 applicant before the proposed negative declaration and
5 initial study are released for public review would avoid the
6 effects or mitigate the effects to a point where clearly no
7 significant effect on the environment would occur, and (2)
8 there is no substantial evidence in light of the whole record
9 before the public agency that the project, as revised, may
10 have a significant effect on the environment.’ (§ 21064.5.)

11 (Coalition for an Equitable Westlake/Macarthur Park v. City of Los Angeles (2020)
12 47 Cal.App.5th 368, 377.)

13 67. The main purpose of a negative declaration is to help the agency decide
14 whether the project the project may have a significant effect on the environment.
15 (CEQA Guidelines § 15063, subd. (a).) “In making this determination, the agency
16 applies the fair argument standard and asks whether substantial evidence supports
17 a fair argument that the proposed project may have a significant adverse effect on
18 the environment. [citation omitted] If the initial study shows the fair argument
19 standard is not met, the agency prepares a negative declaration. (Guidelines, §
20 15002, subd. (k)(2); see Guidelines, §§ 15070–15075 [negative declaration process].)”
21 (Tulare Lake Canal Company v. Stratford Public Utility District (2023) 92
22 Cal.App.5th 380, 401.)

23 68. The initial study must identify the “environmental setting” (CEQA
24 Guidelines § 15063, subd. (d)(2)) which “will normally constitute the baseline
25 physical conditions by which a lead agency determines whether an impact is
26 significant.” (CEQA Guidelines § 15125, subd. (a).)

27 **FIRST CAUSE OF ACTION**

(Abuse of Discretion: Violation of CEQA)

69. Petitioner incorporates by reference each and every factual allegation
contained in the preceding paragraphs as though fully set forth herein.

1 70. Contrary to the IID’s conclusion, the FONSI/EA does not comply with
2 all CEQA mandates because it fails to adequately describe the Project’s setting or
3 analyze the project’s foreseeable environmental impacts.

4 71. The FONSI/EA fails to adequately describe the Project setting, which
5 includes the State of California’s consistent failure to implement restoration
6 measures it is legally required to implement. As described above, the State of
7 California has consistently failed to meet mitigation and restoration milestones and
8 there is no substantial evidence to suggest this pattern will change. The FONSI/EA
9 fails as an informational document to the extent that it fails to admit the Project
10 will be implemented in a context in which the IID continues to implement water
11 conservation measures and transfer to water to Southern California while the State
12 fails to implement the restoration measures intended to mitigate the myriad of
13 significant adverse environmental impacts associated with these conservation
14 measures and water transfers.

15 72. The FONSI/EA failed to adequately describe the geographic extent of
16 the area that would be affected by the proposed Project. The FONSI/EA assumed
17 the “affected environment,” i.e. the geographic area that could be affected by the
18 project, was limited to IID’s Contract Service Area. The evidence clearly shows,
19 however, that the Project can foreseeably cause significant negative impacts beyond
20 the IID’s service area. The evidence shows the Project is capable of causing
21 significant negative environmental impacts on:

- 22 • The entirety of Salton Sea itself;
- 23 • Adjoining exposed lakebeds or areas that will be exposed as a result of
24 the curtailment of water to the Salton Sea;
- 25 • Wetlands and riparian areas associated with the lake;
- 26 • Tributaries in and out of the Salton Sea that could be affected or dry
27 entirely as the lakebed recedes;

- 1 • Plant populations and communities, including protected plants outside
- 2 of the IID Service area;
- 3 • Fish and wildlife that that depend on or inhabit the Salton Sea,
- 4 including federally and state-listed species outside of the IID service
- 5 area; and
- 6 • Air quality impacts across a large geographic area surrounding the
- 7 lake outside of the IID's service area, causing health effects on
- 8 individuals who breath the increased H2S and toxic and carcinogenic
- 9 particulate matter (PM10) coming of lakebeds that will become
- 10 exposed and dry out as lake levels recede.

11 73. The FONSI/EA's discussion of certain impacts includes a brief
12 discussion of Project effects beyond the IID's service area. To the extent that in
13 some instances, the FONSI/EA discusses Project impacts beyond the IID's service
14 area, the FONSI/EA is internally inconsistent.

15 74. The FONSI/EA's contention that the Project impacts will not result in
16 direct, indirect, and cumulative impacts beyond the current and future impacts of
17 the implementation of the QSA is false and not supported by substantial evidence.
18 These false conclusions are based on the FONSI/EA's contention that the proposed
19 Project is "temporary" and its impacts "would taper off to baseline projection levels
20 by the year 2045." (See, FONSI/EA at pp. 49, 93, and 113.) The FONSI/EA fails to
21 take into account the significant adverse effects associated with the State's ongoing
22 failure to implement legally required mitigation measures. The QSA EIR/EIS's
23 assessment of the ultimate impacts associated with the implementation of the QSA
24 assumed the implementation of the entire suite of mitigation measures required by
25 the QSA. Given the State's persistent refusal to fulfill its mitigation requirements,
26 the FONSI/EA's conclusion that the incremental impact of the Project would be no
27 worse than can be expected with the full implementation of the QSA is contrary to
this substantial evidence.

1 75. To conduct a meaningful review of the Project’s incremental adverse
2 environmental impacts, the FONSI/EA was required to acknowledge the past
3 failures of the State of California to implement adequate and legally required
4 mitigation measures, and to consider the cumulative impacts of those failures in its
5 analysis of the Project’s cumulative impacts.

6 76. Given the Project’s context, the evidence in the record leads to the
7 inescapable conclusion that implementation of the Project, in addition to past and
8 reasonably anticipated future Lower Colorado River water conservation efforts and
9 transfers will result in a cumulatively significant impact on the Salton Sea,
10 including protected species and other biological resources. The Project would also
11 make a significant incremental contribution to cumulatively significant air quality
12 impacts by causing increased particulate matter and H2S emissions.

13 77. By causing and accelerating the drying of carbon-rich lakebed, the
14 Project will result in a significant direct and cumulative impact on climate change
15 by causing the release of significant quantities of greenhouse gases (“GHGs”),
16 including carbon dioxide, methane, and nitrous oxide.

17 78. The FONSI/EA’s analysis of the Project’s direct impacts fails to
18 recognize or discuss the combined impacts of the present Project as well as similar
19 past and future projects which may cause irreversible biological and health impacts
20 that may not be ameliorated or lessened even with the future implementation of
21 mitigation measures. For instance, future mitigation measures will not reverse the
22 health effects and even mortality caused by the public’s exposure to air-borne
23 particulate matter that results from dried lakebeds. Likewise, future mitigation
24 measures may not bring back species that are extirpated as a result of high salinity
25 or dried wetlands caused by the Project. The FONSI/EA fails to analyze these and
26 other potentially irreversible environmental harms, thereby grossly understating
27 the Project’s environmental harm and violating CEQA’s informational
requirements.

1 79. The FONSI/EA also underestimates the Project’s impacts on biological
2 resources by falsely assuming that the agricultural-related water conservation will
3 be implemented at a steady rate throughout the year rather than concentrated into
4 a matter of months. For example, the Deficit Irrigation Program (“DIP”) “is a 45- to
5 60-day period in the summer during which no irrigation water is applied to alfalfa,
6 bermuda grass, or klein grass crops, or seed crops of any of those three crops. The
7 efficiency-based programs involve the implementation of one or more conservation
8 measures on a crop and field to reduce the consumptive use of the crop and/or
9 reduce delivery of irrigation water to the field while simultaneously maintaining
10 crop production. IID intends to prioritize the OFECP and DIP water conservation
11 programs.” (FONSI/EA at p. 18.)

12 80. The FONSI/EA claims that “[t]he water conservation programs
13 implemented pursuant to the Proposed Action would temporarily further reduce IID
14 deliveries to approximately 2.2 MAFY for three years from 2024 through 2026.
15 Colorado River water deliveries to IID would return to pre-Proposed Action volumes
16 beginning in 2027 upon the expiration of the SCIA and conclusion of the water
17 conservation programs provided for by the SCIA.” (FONSI/EA at p. 18.)

18 81. As stated above, the FONSI/EA also claims the potential impacts of the
19 Project would not be significant because the eventual implementation of all water
20 transfers under the QSA must be assumed. For example, the FONSI/EA claims the
21 Project’s incremental adverse impact on air quality associated with the lowering
22 elevation of the Salton Sea and corresponding increase in fugitive dust, H₂S
23 emissions, and odor would not result in a significant cumulative air quality impact
24 because “while it is possible that these events may occur earlier, they will still occur
25 without the Proposed Action.” (FONSI/EA at pp. 51–52.)

26 82. The FONSI/EA thus unreasonably tries to have it both ways by
27 simultaneously claiming that while the total and eventual implementation of all
water conservation measures under the QSA is inevitable, the immediate future

1 cutbacks beyond 2026 are speculative. These two claims are in direct conflict and
2 patently cannot reasonably be maintained at the same time. To meet minimum
3 CEQA standards, the FONSI/EA was required to explain why it is reasonable to
4 assume all QSA water cutbacks will eventually be implemented if, as the
5 FONSI/EA claims, the proposed cutbacks are temporary and “water deliveries to
6 IID would return to pre-Proposed Action volumes beginning in 2027.” (FONSI/EA at
7 p. 18.)

8 83. The FONSI/EA’s analysis of the Project’s air quality impact is
9 inadequate and does not amount to substantial evidence supporting a conclusion
10 that the Project will not result in a significant air quality impact. The FONSI/EA’s
11 admission that the proposed Project will increase the area of exposed lakebed by
12 more than 40% supports a fair argument that this substantial increase in exposed
13 lakebed will result in a significant air quality impact by increasing harmful
14 emissions including PM10 and H2S.

15 84. According to the FONSI/EA, the Salton Sea Air Quality Mitigation
16 Program (“SS AQMP”) “recognizes that current and future exposed Salton Sea playa
17 is anticipated to be a new source of PM10 dust emissions.” (FONSI/EA at p. 43.) The
18 FONSI/EA again claims that despite the predictable increase in harmful emissions,
19 the Project would not cause any significant health impacts because implementation
20 of the QSA would result in the same or similar impacts twenty years from now.
21 While the eventual implementation of all water conservation measures called for by
22 the QSA is inherently speculative to the extent that it depends on future cost
23 allocations and could be affected by changes in policy, the potential health effects of
24 this Project are entirely predictable and virtually certain. The FONSI/EA, therefore,
25 is inadequate and violates CEQA to the extent that it fails to discuss the Project’s
26 health effects, particularly the acute health effects that pose a serious risk of harm
27 to the Imperial Valley’s under-represented population largely consisting of ethnic

1 minorities and other underprivileged populations entitled to environmental justice
2 consideration.

3 85. Moreover, the assertion that “given the many factors affecting
4 respiratory conditions in children and adults, there is no data to indicate that the
5 acceleration of the exposed playa could exacerbate those conditions” (FONSI/EA at
6 p. 94) is contradicted by the evidence that shows a direct and immediate link
7 between drying lakebeds and adverse health effects. This cynical assertion also
8 assumes, without any adequate explanation, that all water cutbacks contemplated
9 by the QSA will eventually be implemented.

10 86. The FONSI/EA’s analysis of the biological resource setting is flawed
11 because it mischaracterizes the extent and types of vegetation under current
12 conditions, which are much worse than those predicted by the QSA EIR/EIS. Data
13 from Formation’s February 2024 Playa Exposure Estimates shows that that the
14 actual exposure is below the 5th percentile of predicted playa exposure. Google map
15 images, which Sierra Club and other environmental groups submitted to
16 Reclamation along with public comments, show that areas the FONSI/EA
17 characterize as dominated by “Tamarisk-Iodine Bush Thickets/Scrub” are not
18 vegetated and are in fact IID’s Red Hill Bay Dust Control Project. This error
19 undermines the credibility of the FONSI/EA’s biological analysis as a whole.

20 87. The IID abused its discretion by using the FONSI/EA in place of a
21 legally adequate EIR because substantial evidence in the record supports a fair
22 argument that the Project may cause one or more significant environmental impact.
23 There is no evidence in the record or cited in IID RESOLUTION NO. 26-2024 to
24 show the IID used the correct legal standard, i.e., the “fair argument” test, in
25 reaching the conclusion that it could approve the Project in reliance on a negative
26 declaration or its NEPA equivalent, a FONSI/EA.

27 88. The FONSI/EA violates CEQA also because it fails to adequately
analyze the feasibility and efficacy of the proposed mitigation measures and

1 monitoring strategies. The following is a non-exhaustive list of specific
2 inadequacies:

- 3 • The proposed strategies for mapping and assessing landscape level
4 changes in the environment are convoluted and have not been shown
5 to be effective or appropriate for identifying detailed on the ground
6 conditions of the habitat for fish and wildlife that may be affected by
7 the reduction of water supplies;
- 8 • The proposed regular human habitat monitoring is likewise unlikely to
9 be effective because the observation locations described in the
10 FONSI/EA (i.e. drain location) may as much as two miles away from
11 the habitat areas that may be affected by the reduced water
12 availability or otherwise not be able to observe the affected areas. This
13 problem will continue to be exacerbated as the lakebeds recede;
- 14 • There is no evidence or discussion to show the proposed weekly
15 monitoring would be enough to detect and avert the types of biological
16 harm that could develop quickly, especially during hot summer
17 months;
- 18 • There is no evidence or discussion to show the proposed “action
19 triggers” that would initiate “impact avoidance measures” will be
20 effective in avoiding catastrophic impacts on biological resources.
21 These triggers will only apply to drains in a very limited area, thereby
22 excluding from mitigation large areas or potential scenarios which may
23 require mitigation;
- 24 • The FONSI/EA fails to analyze the effectiveness of the SSMP dust
25 mitigation efforts and strategies, or IDD’s own existing dust mitigation
26 which, according to the FONSI/EA, the IID intends to continue to
27 address this Project’s air quality impacts;

- The FONSI/EA fails to propose, let alone analyze, any dust mitigation to address this Project’s air quality impacts outside of the IID’s service area;
- The FONSI/EA fails to propose or discuss any mitigation measures to address the Project’s impact on climate change resulting from the increase in GHG emissions.

89. The IID violated CEQA because, based on the evidence in the record, it can be fairly argued that the Project will have one or more potentially significant impacts on the environment. Accordingly, the IID was required to prepare an EIR to address the Project’s potentially significant impact. (Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1112 [“[I]f a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”].)

SECOND CAUSE OF ACTION

(Abuse of Discretion: Findings Not Supported by Substantial Evidence)

90. Petitioner incorporates by reference each and every factual allegation contained in the preceding paragraphs as though fully set forth herein.

91. The IID’s implicit finding that the Project is incapable of causing a significant environmental impact is not supported by substantial evidence. IID’s finding that “that there is no substantial evidence that the project will have a significant effect on the environment” is simply wrong because credible evidence in the record supports a conclusion that the Project could cause one or more significant environmental impacts.

92. The IID’s implied finding that the proposed mitigation measures discussed in the FONSI/EA are feasibly and will be effective in reducing the

1 Project's potentially significant environmental to a less than significant level is not
2 supported by substantial evidence.

3 93. The IID's finding that the FONSI/EA meets the standards of CEQA is
4 not supported by substantial evidence.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, SIERRA CLUB prays for judgement against IMPERIAL
7 IRRIGATION DISTRICT, as set forth below:

- 8 (1) That the Court issue an alternative and peremptory writ of mandate
9 commanding Respondent IMPERIAL IRRIGATION DISTRICT to set
10 aside, invalidate, and void its approval of the 2024-2026 Temporary
11 Colorado River System Water Conservation Project;
- 12 (2) For declaratory judgment, stating that the actions of IMPERIAL
13 IRRIGATION DISTRICT in approving the 2024-2026 Temporary
14 Colorado River System Water Conservation Project violated the
15 California Environmental Quality Act;
- 16 (3) For a temporary restraining order, preliminary injunction, and
17 permanent injunction prohibiting any actions based on the approval of
18 the 2024-2026 Temporary Colorado River System Water Conservation
19 Project;
- 20 (4) For an award of costs and attorney's fees; and
- 21 (5) For such other and further relief as the Court deems just and proper.

22 DATED: 9/12/24

LAW OFFICE OF BABAK NAFICY

Babak Naficy

Babak Naficy, Attorney for Petitioner

25 DATED: 9/12/24

HALCYON LAW APC

Eva Ulz

Eva Ulz, Attorney for Petitioner

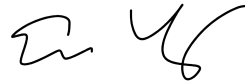
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VERIFICATION

I, Eva Ulz, am counsel to Petitioner and Plaintiff Sierra Club (“Petitioner”) and have personal knowledge of the following facts. Sierra Club’s headquarters are located outside San Luis Obispo County, the county in which I maintain my office. I have read the foregoing Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief. The facts alleged in the above Petition are true to the best of my knowledge and belief, and, on that ground, Petitioner alleges that the matters stated herein are true.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct. This declaration was executed in San Luis Obispo County, California.

DATED: 9/12/24



Eva Ulz, Attorney for Sierra Club

EXHIBIT A



Via Us Mail and email

September 12, 2024

Imperial Irrigation District
Board of Directors
333 E. Banoni Blvd.
Imperial, CA 92251
rnajera@iid.com


*Re: Notice of Intent to Sue,
IID 2024-2026 Temporary Colorado River System Water
Conservation Project*

To whom it may concern,

This office represents the Sierra Club, on whose behalf I submit this notice of intent to sue the Imperial Irrigation District (IID) to set aside the IID's approval of the above-referenced Project.

The Sierra Club contends that the IID's approval of this Project in reliance on the Environmental Assessment and Finding of No Significant Impact (FONSI/EA) that was prepared by the Bureau of Reclamation violated the California Environmental Quality Act (CEQA) (Pub. Res. Code Sec. 21000 et seq.) and was therefore an abuse of discretion. Contrary to the IID's conclusion and findings, the FONSI/EA does not meet the requirements of CEQA and therefore should not have been relied upon by the IID in place of a negative declaration prepared pursuant to CEQA. The FONSI/EA violates CEQA in large part because it fails to adequately describe the Project's setting or to analyze the Project's direct, indirect and cumulative impacts.

Sincerely,


Babak Naficy
Attorney for the Sierra Club

cc. Bureau of Reclamation (prj-lcr-nepa@usbr.gov)

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