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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF KERN**

12 CENTRAL DELTA WATER AGENCY, ) **Case No.**  
SOUTH DELTA WATER AGENCY, )  
13 CALIFORNIA WATER IMPACT NETWORK, )  
CALIFORNIA SPORTFISHING PROTECTION )  
14 ALLIANCE, CENTER FOR BIOLOGICAL )  
DIVERSITY, CAROLEE KRIEGER, and JAMES ) **COMPLAINT FOR DECLARATORY**  
15 CRENSHAW, ) **AND INJUNCTIVE RELIEF AND**  
 ) **PETITION FOR WRIT OF MANDATE**

16 Plaintiffs / Petitioners, )

17 vs. )

18 KERN COUNTY WATER AGENCY )  
and DOES 1 – 20, )

19 Defendants / Respondents, )  
20 )

21 CALIFORNIA DEPARTMENT OF WATER )  
RESOURCES, DUDLEY RIDGE WATER )  
DISTRICT, KERN WATER BANK )  
22 AUTHORITY, PARAMOUNT FARMING )  
COMPANY LLC, ROLL INTERNATIONAL )  
23 CORPORATION, SEMITROPIC WATER )  
STORAGE DISTRICT, TEJON-CASTAC )  
24 WATER DISTRICT, TEJON RANCH )  
COMPANY, WESTSIDE MUTUAL WATER )  
25 COMPANY, WHEELER RIDGE-MARICOPA )  
WATER STORAGE DISTRICT, and DOES 21 – )  
26 60, )

27 Real Parties in Interest. )

) Code Civ. Proc. §§ 860, 1060, 1085  
) Gov. Code §§ 17700, 53510, 53511  
) Civ. Code §§ 1550, 1605, 1667  
) Cal. Const. Art. 16 § 6.

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26 Attorneys for Plaintiffs / Petitioners Central Delta Water Agency and South Delta Water  
27 Agency

1 **INTRODUCTION**

2 1. This action challenges the validity of the fee-simple “transfer” of the Kern Water  
3 Bank<sup>1</sup> (“KWB”), the world’s largest groundwater storage facility, from Kern County Water  
4 Agency (“KCWA”) to Kern Water Bank Authority (“KWBA”). The transfer is authorized and  
5 effectuated through the Monterey Plus Amendments to the long-term delivery contracts for the  
6 State Water Project; final approval of which was made by the California Department of Water  
7 Resources (“DWR”) on May 4, 2010, in a Memorandum signed by Director Mark W. Cowin.

8 2. The actions of KCWA permanently transform the Kern Water Bank from  
9 statewide to private control by enacting the second part of a two-part transaction: first, from the  
10 DWR to KCWA under the Monterey Plus Amendments, and second, KCWA’s immediate  
11 retransfer of the Kern Water Bank to a novel joint powers authority, KWBA. The retransfer by  
12 KCWA amounts to an unlawful and unconstitutional gift of a critical state asset, divesting the  
13 State of California of title, ownership, management, and control of the country’s largest  
14 groundwater storage facility and ceding it to private interests, including majority control by  
15 Roll International Corporation, one of the world’s largest agricultural and holding companies.

16 3. This action is the second of two related reverse-validation actions brought by  
17 Plaintiffs challenging the two-step transfer of Kern Fan Element from DWR to KWBA. The  
18 first reverse-validation action, against DWR, was filed on June 3, 2010 in the Superior Court of  
19 Sacramento County, Case No. 34-2010-80000561. That action challenges the validity of the  
20 hybrid transfer by focusing on the actions of DWR, while this action challenges the validity of  
21 the hybrid transfer by focusing on the actions of KCWA.

22 4. Plaintiffs petition this Court in the alternative for a writ of mandate under Code  
23 Civ. Proc § 1085 to vacate and set aside the decision approving the transfer of the Kern Water  
24 Bank to KWBA.

25 \_\_\_\_\_  
26 <sup>1</sup>The term “Kern Water Bank” is most often used to refer to the operational banking facility  
27 initially developed by DWR but currently operated by KWBA. The term “Kern Fan Element”  
is most often used to refer to the real property and water acquired and developed by DWR as the

1 **JURISDICTION AND VENUE**

2 5. For the purposes of Petitioners’ Reverse Validation Action, jurisdiction over all  
3 interested parties may be had by publication of summons pursuant to Gov. Code § 6063 in a  
4 newspaper of general circulation designated by this Court. (Code Civ. Proc. § 861.)  
5 Petitioners shall publish the summons served on Defendant pursuant to Code Civ. Proc. § 861.

6 6. Venue for the reverse-validation action and the constitutional action contained  
7 herein properly lies in the Kern County Superior Court pursuant to Gov. Code § 17700(c) and  
8 Code Civ. Proc. § 860, because Defendant KCWA is located in Kern County.

9 7. In the alternative, this Court has jurisdiction over this action pursuant to Cal.  
10 Code Civ. Proc. § 1085 over actions taken by Defendant to this action. This Court has the  
11 authority to issue a writ of mandate to provide all of the relief requested in this Complaint and  
12 Petition.

13  
14 **PARTIES**

15 8. Plaintiff and Petitioner CENTRAL DELTA WATER AGENCY (“CDWA”) is a  
16 political subdivision of the State of California created under the Central Delta Water Agency  
17 Act, Chapter 1133 of the Statutes of 1973 as amended. The CDWA encompasses  
18 approximately 120,000 acres within San Joaquin County, all of which is within the Bay-Delta.  
19 The lands within CDWA jurisdiction are primarily agricultural but also contain recreational  
20 developments, significant wildlife habitat and some residential development. CDWA is  
21 empowered to assist landowners to protect and assure a dependable supply of water of suitable  
22 quantity sufficient to meet present and future needs. CDWA and its members are directly,  
23 adversely and irreparably harmed by the transfer, including its attendant loss of revenue and  
24 property of the state and its harm to the state’s water resources and environment, and will be  
25 until and unless this Court provides the relief prayed for in this complaint and petition. CDWA

26  
27 first phase of the Kern Water Bank. In this Petition and Complaint the terms Kern Water Bank  
and Kern Fan Element are used interchangeably.

1 and its members are interested persons pursuant to Code Civ. Proc. § 863 and beneficially  
2 interested pursuant to Code Civ. Proc. § 1086.

3 9. Plaintiff and Petitioner SOUTH DELTA WATER AGENCY (“SDWA”) is a  
4 political subdivision of the State of California created by the California Legislature under the  
5 South Delta Water Agency Act, Chapter 1089 of the Statutes of 1973 as amended. The SDWA  
6 encompasses approximately 148,000 acres within San Joaquin County, all of which is within  
7 the Bay-Delta. The lands within SDWA jurisdiction are primarily agricultural but also contain  
8 recreational developments, significant wildlife habitat areas, and residential. SDWA is  
9 empowered to assist landowners to protect and assure a dependable supply of water of suitable  
10 quantity sufficient to meet present and future needs. SDWA and its members are directly,  
11 adversely and irreparably harmed by the transfer, including its attendant loss of revenue and  
12 property of the state and its harm to the state’s water resources and environment, until and  
13 unless this Court provides the relief prayed for in this complaint and petition. SDWA and its  
14 members are interested persons pursuant to Code Civ. Proc. § 863 and beneficially interested  
15 pursuant to Code Civ. Proc. § 1086.

16 10. Plaintiff and Petitioner CALIFORNIA WATER IMPACT NETWORK (“C-  
17 WIN”) is a non-profit, public benefit corporation formed under the laws of the State of  
18 California for the purpose of protecting and restoring fish and wildlife resources, scenery,  
19 water quality, recreational opportunities, agricultural uses, and other natural environmental  
20 resources and uses of the rivers and streams of California, including the San Francisco Bay-  
21 Delta estuary, also known as the Sacramento-San Joaquin Bay-Delta (“Bay-Delta”), its  
22 watershed and its underlying groundwater resources. Members, staff, and officers of C-WIN  
23 reside in, use, and enjoy the Bay-Delta estuary and its watershed, and also pay through their  
24 individual bills from their local water service providers for water delivered by the California  
25 State Water Project, and are concerned about the cost, quality, allocation, and origins of water  
26 delivered from this statewide water system. Staff, members and officers of C-WIN are deeply  
27 concerned about the public interest consequences of continuation of Monterey Plus agreement

1 principles and water project contract amendments implementing it. Consequently C-WIN, its  
2 staff, officers and members, are directly, adversely and irreparably harmed by the transfer,  
3 including its attendant loss of revenue and property of the state and its harm to the state’s water  
4 resources and environment, until and unless this Court provides the relief prayed for in this  
5 complaint and petition.

6 11. Plaintiff and Petitioner CALIFORNIA SPORTFISHING PROTECTION  
7 ALLIANCE (“CSPA”) is a non-profit organization with more than 2500 members throughout  
8 California dedicated to protecting, preserving and enhancing the fisheries and associated  
9 aquatic and riparian ecosystems of California waterways, including the Central Valley rivers  
10 leading to the Bay-Delta. CSPA and its members actively participate in water rights and water  
11 quality processes, engage in education and organization of the fishing community, conduct  
12 restoration efforts, and vigorously enforce environmental laws enacted to protect fisheries,  
13 habitat and water quality. CSPA’s staff, members, and officers reside and own property  
14 throughout California as well as those areas served by the State Water Project, and use the  
15 waters and lands affected by the State Water Project, including the Bay-Delta, for recreational,  
16 wildlife viewing, scientific, and educational purposes. CSPA owns about 20 acres in  
17 Collinsville on the Sacramento River near the confluence with the San Joaquin in the Delta.  
18 Consequently, CSPA, its staff, officers and members, are directly, adversely and irreparably  
19 harmed by the transfer, including its attendant loss of revenue and property of the state and its  
20 harm to the state’s water resources and environment, until and unless this Court provides the  
21 relief prayed for in this complaint and petition.

22 12. Plaintiff and Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is  
23 a non-profit, public interest corporation with over 42,000 members and offices in San  
24 Francisco, Los Angeles, and Joshua Tree, California, as well as offices in Arizona, New  
25 Mexico, Oregon, Vermont, and Washington, D.C. CBD and its members are dedicated to  
26 protecting diverse native species and habitats through science, policy, education, and  
27 environmental law. CBD staff, members, and officers reside and own property throughout

1 California as well as those areas served by the State Water Project, and use the waters and  
2 lands affected by the State Water Project, including the Bay-Delta, for recreational, wildlife  
3 viewing, scientific, and educational purposes. Consequently, CBD, its staff, officers and  
4 members, are directly, adversely and irreparably harmed by the transfer, including its attendant  
5 loss of revenue and property of the state and its harm to the state's water resources and  
6 environment, until and unless this Court provides the relief prayed for in this complaint and  
7 petition.

8 13. Plaintiff and Petitioner CAROLEE KRIEGER resides in and is a resident of the  
9 City of Santa Barbara, California who has been assessed, and has paid, taxes to the State within  
10 the past year. Currently president of C-WIN, Carolee Krieger has been an advocate for sound  
11 water policy and conservation in California for over 20 years. Consequently, Carolee Krieger  
12 is directly, adversely and irreparably harmed by the transfer, including its attendant loss of  
13 revenue and property of the state and its harm to the state's water resources and environment,  
14 until and unless this Court provides the relief prayed for in this complaint and petition.

15 14. Plaintiff and Petitioner JAMES CRENSHAW is a resident of the State of  
16 California who owns property in the Central Valley of California and has been assessed, and  
17 has paid, taxes to the State within the past year. James Crenshaw is a farmer and life-long  
18 sport fisherman, and has been president of CSPA since the mid-1980s. James Crenshaw is  
19 directly, adversely and irreparably harmed by the transfer, including its attendant loss of  
20 revenue and property of the state and its harm to the state's water resources and environment,  
21 until and unless this Court provides the relief prayed for in this complaint and petition.

22 15. Defendant KERN COUNTY WATER AGENCY ("KCWA"), a State Water  
23 Project Contractor, a signatory to the Monterey Plus Amendments, and a member entity of the  
24 Kern Water Bank Authority, is presently and has been, at all times relevant hereto, a California  
25 special district and political subdivision of the State of California organized and existing under  
26 the Kern County Water Agency Act, Cal. Water Code Appendix §§ 99-1 *et seq.*

27 16. Real Party in Interest CALIFORNIA DEPARTMENT OF WATER

1 RESOURCES is a governmental agency and political subdivision of the State of California  
2 charged with the authority to regulate and administer delivery of water through the State Water  
3 Project, subject at all times to the obligations and limitations of all applicable state, federal, and  
4 other laws. Upon the May, 2010, approval of the Monterey Plus Amendments, DWR  
5 authorized the transfer of Kern Water Bank to KCWA and approved the purported  
6 consideration for the exchange, placing DWR in contractual privity with Defendant.

7 17. Real Party in Interest DUDLEY RIDGE WATER DISTRICT (“DRWD”), a  
8 member entity of KWBA, is a water district organized and existing under the California Water  
9 District Law, Cal. Water Code §§ 39000 *et seq.*, with its principal place of business in  
10 Corcoran, California.

11 18. Real Party in Interest KERN WATER BANK AUTHORITY is a Joint Powers  
12 Authority organized on October 16, 1995 and existing under the Joint Exercise of Powers Act,  
13 Cal. Gov’t Code § 6500 *et seq.* The member agencies of KWBA are DRWD, KCWA,  
14 Semitropic Water Storage District, Tejon-Castac Water District, Westside Mutual Water  
15 Company, and Wheeler Ridge-Maricopa Water Storage District. As a result of the transfer of  
16 the Kern Water Bank, KWBA currently holds title, deed and management responsibilities for  
17 the Kern Fan Element and the Kern Water Bank, pursuant to the Joint Powers Agreement for  
18 the Kern Water Bank Authority.

19 19. Real Party in Interest PARAMOUNT FARMING COMPANY LLC is a  
20 Delaware-based limited liability corporation, doing business at all times in California.  
21 Paramount Farming Company is controlled by Real Party in Interest Roll International  
22 Corporation, and is the controlling entity for Real Party in Interest Westside Mutual Water  
23 Company. Paramount Farming Company LLC irrigation requirements are serviced in part by  
24 SWP water provided by Westside Mutual Water Company.

25 20. Real Party in Interest ROLL INTERNATIONAL CORPORATION is a  
26 Delaware-based limited liability company and the parent corporation and/or holding company  
27 for Real Party in Interest Paramount Farming Company LLC. Through its subsidiary



1 Paramount Farming Company LLC, Roll International Corporation controls Westside Mutual  
2 Water Company. For the purposes of this petition and complaint, Petitioners / Plaintiffs are  
3 informed and believe that Westside Mutual Water Company, Paramount Farming Company  
4 LLC and Roll International Corporation are and have been, at all relevant times,  
5 instrumentalities and joint ventures of each other and have been at all relevant times been  
6 acting in concert with each other.

7 21. Real Party in Interest SEMITROPIC WATER STORAGE DISTRICT, a member  
8 entity of KWBA, is a water storage district organized and existing under the California Water  
9 District Storage Law, Cal. Water Code §§ 39000 *et seq.*, with its principal place of business in  
10 Wasco, California.

11 22. Real Party in Interest TEJON-CASTAC WATER DISTRICT, a member entity  
12 of KWBA, is a water district organized and existing under the California Water District Law,  
13 Cal. Water Code §§ 39000 *et seq.*, with its principal place of business in Lebec, California.  
14 Tejon-Castac Water District is wholly controlled by Real Party in Interest Tejon Ranch  
15 Company.

16 23. Real Party in Interest TEJON RANCH COMPANY, a publicly-traded  
17 corporation incorporated in the State of Delaware at all times relevant here doing business in  
18 the State of California. For the purposes of this petition and complaint Tejon Ranch Company  
19 controls Real Party in Interest Tejon-Castac Water District, a member entity of KWBA, and  
20 stores water in and receives water from and/or is expected to store water in and receive water  
21 from the Kern Water Bank.

22 24. Real Party in Interest WESTSIDE MUTUAL WATER COMPANY, a member  
23 entity of the Kern Water Bank Authority, is a private mutual water company existing as a  
24 limited liability company under the laws of the State of California, Cal. Corporations Code §§  
25 17060 *et seq.*, and Public Utilities Code § 2725 *et seq.*, with its principal place of business in  
26 Bakersfield, California. Petitioners / Plaintiffs are informed and believe that (1) Westside  
27 Mutual is a wholly owned subsidiary of Paramount Farming Company, LLC; (2) both these

1 companies are privately owned by Roll International Corporation; and (3) Roll International is  
2 either the holding company or parent company for the other entities listed in this paragraph.

3 25. Real Party in Interest WHEELER RIDGE-MARICOPA WATER STORAGE  
4 DISTRICT, a member entity of KWBA, is a water storage district organized and existing under  
5 the California Water District Storage Law, Cal. Water Code §§ 39000 *et seq.*, with its principal  
6 place of business in Bakersfield, California.

7 26. Plaintiffs / Petitioners are currently unaware of the true names and capacities of  
8 DOES 1 through 20, inclusive, and therefore sue those parties by such fictitious names. DOES  
9 1 through 20, inclusive, are agents of the state government or other persons or entities presently  
10 unknown to Plaintiffs / Petitioners who are responsible in some manner for the conduct  
11 described in this complaint and petition. Plaintiffs / Petitioners will amend this petition to  
12 show the true names and capacities of DOES 1 through 20 when such names and capacities  
13 become known.

14 27. Plaintiffs / Petitioners are currently unaware of the true names and capacities of  
15 Real Parties in Interest, DOES 21 through 60, inclusive. DOES 21 through 60, inclusive, are  
16 persons or entities presently unknown to Plaintiffs / Petitioners who claim some legal or  
17 equitable interest in the Project that is the subject of this action. Plaintiffs / Petitioners will  
18 amend this petition to show the true names and capacities of DOES 21 through 60 when such  
19 names and capacities become known.

20  
21 **GENERAL ALLEGATIONS**

22 **State Water Project**

23 28. The State Water Project (“SWP”) is a state-wide water conveyance system  
24 managed by DWR, which allocates water to 29 State Water Contractors (“SWP Contractors.”)  
25 In general, water is stored in reservoirs in the northern part of the state and conveyed south via  
26 the Feather River, Sacramento River, and the San Francisco-San Joaquin Bay Delta, from  
27 which it is pumped and conveyed via the California Aqueduct to SWP Contractors in the

1 southern half of the State. These contractors in turn distribute SWP water via a series of canals  
2 and aqueducts to their customers.

3 29. In 1959, the Legislature passed the Burns-Porter Act (formally known as the  
4 California Water Resources Development Bond Act), which authorized the construction and  
5 operation of the SWP, as well as the issuance, sale, and repayment of the bonds that have been,  
6 and continue to be, the basis for funding the development and operation of the SWP, including  
7 its storage facilities. The Burns-Porter Act was subsequently approved by California voters in  
8 November, 1960, and codified in Water Code § 12930 *et seq.*

9 30. The SWP was originally designed to deliver 4.23 million acre-feet (“MAF”) per  
10 year of water. However, the majority of facilities originally contemplated for the SWP have  
11 never been constructed, including additional project conservation facilities and the damming of  
12 rivers now protected under the California Wild and Scenic Rivers Act. (Pub. Res. Code §§  
13 5093.50 *et seq.*)

14 31. Due to its partial completion as well as other factors, the SWP is capable today  
15 of delivering only half or less of the amount contracted for by SWP contractors in their long-  
16 term contracts (known as “Table A amounts”). The difference between what was originally  
17 promised with the SWP and what has actually been delivered is often described as “paper  
18 water.”

19 32. Governor Edmund G. Brown, Sr. worked with DWR to create a set of equitable  
20 principles designed to manage the SWP for the good of all Californians. DWR published these  
21 jointly developed “Contracting Principles for Water Service Contracts under the California  
22 Water Resources Development System” (hereinafter “Contracting Principles”) in January,  
23 1960.

24 33. The Contracting Principles include provisions stating that the minimum project  
25 yield of the SWP would increase due to added storage facilities, and that bond funds would be  
26 used to construct added storage facilities.

27 34. As early as 1979, the Director of the DWR believed groundwater basins would

1 be used as underground storage facilities for SWP water, arguing that their use would “add  
2 flexibility to SWP operations and can be a hedge against earthquake or other disablement of  
3 the California Aqueduct.”

4 35. In 1985, the California Legislature passed legislation stating that DWR “shall”  
5 construct facilities south of the Sacramento-San Joaquin Delta for utilizing groundwater  
6 storage space for the benefit of the SWP. Water Code § 11258.

7 36. If a groundwater water storage facility is within the boundaries of an agency that  
8 has contracted for a supply of SWP water, then Water Code § 11258 also requires DWR to  
9 enter into a contract with that agency concerning the facility.

10 **Kern Water Bank**

11 37. The Kern Water Bank was originally conceived of by DWR as a state-wide  
12 water storage facility to be used as an integral asset to the State Water Resources Development  
13 System. DWR began planning of the facility in the early 1980s, and was further compelled to  
14 construct the facility through passage of Water Code § 11258 in 1985.

15 38. In 1986, prior to purchase of the surface land above the Kern Fan Element, DWR  
16 prepared an EIR for the development of a water bank facility.

17 39. The 1986 EIR raised serious environmental concerns with development of the  
18 storage facility, including potential harm to endangered species both locally and in the San  
19 Joaquin Delta, as well as adverse impacts to groundwater quantity and quality.

20 ***1987 Memorandum of Understanding***

21 40. As required by Water Code § 11258, DWR entered into a Memorandum of  
22 Understanding with KCWA to develop and operate Kern Water Bank on March 25, 1987.  
23 DWR chose for its groundwater storage site the Kern Fan Element of the Kern Water Bank, a  
24 depleted alluvial groundwater reservoir in southern Kern County.

25 41. Article 1 of the MOU defined all opportunities by DWR to store imported  
26 surface water in the Kern Groundwater Basin as the “Kern Water Bank.”

27 42. Under MOU Article 1, the “primary purpose of the Kern Water Bank is to

1 augment the dependable water supply of the State Water Project.” Local benefits were  
2 provided “incidental to its primary purpose.”

3 43. MOU Article 4(e), “Operational Criteria,” noted that Kern Water Bank was to be  
4 operated as “an additional SWP conservation facility” and integrated with overall SWP  
5 operations. MOU Article 4(e) also notes that “water may be extracted from the Kern Water  
6 Bank only to the extent that it was stored previously.”

7 44. MOU Article 5(a) specified the right of KCWA to acquire the Kern Fan Element  
8 land, but if it was not purchased within 90 days, the land was to be purchased by DWR as part of  
9 the State Water Resources Development System.

10 45. Under MOU Article 5(a), KCWA retained the right to purchase the Kern Fan  
11 Element for ten years after execution of the 1987 agreement, “provided that the Department’s  
12 right to use the area for project purposes will be preserved.”

13 46. MOU Article 5(a) declared that “Consistent with Article 11464 of the Water  
14 Code the Department shall not sell facilities constructed or acquired for the Kern Water Bank.”

15 ***Purchase and Development of Kern Fan Element***

16 47. The Kern Water Bank was designed to consist of several “elements,” with other  
17 potential elements proposed by local water districts. The Kern Fan Element developed by  
18 DWR was to be the first element. The other “elements” are described as contracts with local  
19 water districts to “use surface water delivered by the SWP in lieu of pumping ground water” in  
20 wetter years, while “the amount of groundwater not pumped would be credited to Kern Water  
21 Bank and extracted for the SWP during drier years.” The Semitropic Water Storage District is  
22 explicitly named as one such element under local development.

23 48. DWR contracted for the purchase of the 20,000 acres to comprise Kern Fan  
24 Element from Tenneco West, Inc. in 1988. The purchase price for the land was approximately  
25 \$34.6 Million.

26 49. DWR classified the land purchase for Kern Water Bank under the Capital Cost  
27 Component of the Delta Water Charge. According to the bond-repayment provisions of the

1 SWP, this categorization meant every SWP contractor throughout the state shared the cost of  
2 purchasing land for the Kern Fan Element.

3 50. In 1990, DWR's annual Bulletin 132 noted that Kern Fan Element alone was  
4 projected to have a storage capacity of one million acre-feet and could increase SWP yield by  
5 up to 144,000 acre-feet per year "at competitive water prices."

6 51. Additional activities paid for and performed by DWR for the benefit of the Kern  
7 Fan Element included exploration, ground water investigations, water operation studies,  
8 groundwater modeling impact studies, preparation of preliminary designs and cost estimates,  
9 soil borings, and construction of monitoring wells.

10 52. DWR paid for and prepared two environmental documents for Kern Fan  
11 Element, including an EIR (with Supplement) and a Habitat Conservation Plan. A habitat  
12 conservation plan was required to prevent the "take" of threatened and endangered animals  
13 found on or adjacent to the Kern Fan Element; such animals include the San Joaquin Kit Fox,  
14 Swainson's hawk, Tipton kangaroo rat, San Joaquin Antelope Squirrel, and blue-nosed leopard  
15 lizard.

16 53. In 1990 DWR purchased 98,005 acre-feet of ground water from the Hacienda  
17 Corporation for a groundwater demonstration program to store water in the Kern Fan Element.  
18 DWR paid \$45.29 per acre-foot, for a total of \$4,438,646.45.

19 54. DWR also delivered 9,500 acre-feet of water to KCWA for deposit in Kern Fan  
20 Element that was purchased by DWR from Berrenda Mesa Water District. DWR paid \$26 per  
21 acre-foot of water, for a total of \$247,000, as well as the cost of conveyance of the water,  
22 which was not disclosed.

23 55. DWR also paid for rehabilitation of existing wells and construction of  
24 conveyance facilities for the Hacienda Corporation water. The wells and conveyance facilities  
25 were to be used for the Kern Fan Element. The contract for the conveyance facility was  
26 completed in June, 1992, while contracts for rehabilitating additional pumps and constructing  
27 an additional conveyance facility were carried out by the DWR design office.

1           56.     In the early 1990's, DWR also purchased crop leasing rights from 10 farmers  
2 within the boundaries of Kern Water Bank at a cost of \$3,100,000 to fallow 7,235 acres.

3           57.     Taken together, estimates for the State's cost to develop Kern Water Bank  
4 exceed \$74 Million. Because DWR did not itemize the cost of the components when it  
5 transferred the Kern Fan Element, this cost estimate is necessarily incomplete.

6           58.     The \$74 Million cost estimate includes only initial design, development and  
7 construction of Kern Fan Element, and does not reflect the market value of an underground  
8 water storage facility capable of storing 1 million acre-feet per year of SWP water on behalf of  
9 the SWP. To purchase such a facility today would easily run into the hundreds of millions of  
10 dollars.

11          59.     The development cost also does not include the lost revenue to the state from  
12 transferring half of the water in Kern Fan Element to KWBA. After the Kern Fan Element was  
13 transferred, the KWBA member entities recorded \$27,858,500 in contributions of capital  
14 resulting from the acquisition of the Kern Fan Element water.

15          60.     The development cost also does not include the lost revenue to the state from re-  
16 purchasing the water given to KCWA for its use in the Environmental Water Account.

17     **The Monterey Amendments**

18          61.     In December 1994, DWR held undisclosed meetings with five water contractors  
19 including KCWA as well as the Central Coast Water Authority ("CCWA"). These meetings  
20 resulted in a December 16, 1994, Statement of Principles that described a series of  
21 amendments to the long-term contracts for delivery of water through the State Water Project.

22          62.     Because these meetings took place in Monterey, California, the statement of  
23 principles became known as the Monterey Agreement. Amendments to the SWP contracts  
24 based upon these principles became known as the "Monterey Amendments."

25          63.     In December, 1995, the Monterey Amendments were added (but not  
26 implemented) as "Amendment 23" to the KCWA water supply contract. These contract  
27 Amendments were not implemented upon execution, due to a self-imposed stay provision

1 appearing in article 29(a) of the Monterey Amendments as originally drafted, which would  
2 have prevented implementation while legal challenges filed within 60 days of execution of  
3 KCWA's amendments remained pending.

4 64. Two non-profit organizations (Planning and Conservation League and Citizens  
5 Planning Association of Santa Barbara County) and a SWP contractor (Plumas County Flood  
6 Control and Water Conservation District) (collectively, "PCL Petitioners") challenged the  
7 environmental approval and contractual validity of the Monterey Amendments and exchange  
8 agreement, arguing, among other things, that pursuant to the California Environmental Quality  
9 Act ("CEQA"), Pub. Resources Code § 21000 et seq., the certification of the Program EIR was  
10 contrary to law and that CCWA lacked the authority to act as the state-wide lead agency for the  
11 project. The petitioners also challenged the validity of DWR's attempt to divest the Kern Fan  
12 Element from state ownership and operation.

13 65. On August 15, 1996, the Sacramento Superior Court entered judgment against  
14 the PCL petitioners. Before the judgment was final in the Superior Court, DWR privately  
15 arranged with the SWP contractors that had signed Monterey Amendments to remove the self-  
16 imposed stay provision in Article 29(a), which had until then prevented implementation of the  
17 Monterey Amendments while litigation was pending. DWR did not inform the PCL  
18 Petitioners of this action.

19 66. Based upon these undisclosed, executive-session waivers, and without securing  
20 final judgment, DWR implemented the original Monterey Amendments, including the  
21 relinquishment of the Kern Fan Element to KCWA. KCWA retransferred KWB to KWBA one  
22 day later.

23 67. The Third District Court of Appeal reversed and ruled in favor of the PCL  
24 Petitioners in *Planning and Conservation League v. Department of Water Resources*, (2000)  
25 83 Cal.App.4th 892. The Court agreed that the Monterey Amendments produced state-wide  
26 significant impacts which could not be analyzed by a local agency, and that an entirely new  
27 Program EIR had to be prepared under the direction of DWR. In a separate section of the



1 opinion, the *PCL v. DWR* court held that the trial court erroneously dismissed the reverse-  
2 validation action on procedural grounds.

3 68. On December 13, 2000, the California Supreme Court unanimously denied  
4 review in *PCL v. DWR*, and summarily denied separate extraordinary writ petitions filed by  
5 KCWA and Wheeler Ridge-Maricopa Water Storage District, which contested the  
6 determinations in *PCL v. DWR*.

7 69. The *PCL v. DWR* decision required DWR to make a new decision on approval of  
8 the Monterey Amendments, including the provision that transferred Kern Fan Element to  
9 KCWA and then to KWBA.

### 10 **Monterey Plus Amendments**

11 70. In May 2003, the PCL Petitioners and DWR reached a settlement agreement  
12 (“Settlement Agreement”), subsequently ratified by the Superior Court in a May 20, 2003  
13 Implementation Order.

14 71. Under the terms of the Settlement Agreement and Implementation Order, the  
15 hybrid transfer and operation of the Kern Water Bank in accordance with the Monterey  
16 Amendments was allowed to proceed on a temporary, interim basis, and only with several  
17 additional terms added in the Settlement Agreement, including additional contract  
18 amendments; the interim basis explicitly lasted only until the completion of a new decision-  
19 making process by DWR and the certification of entirely new CEQA review for the project.

20 72. Following the signing of the 2003 Settlement Agreement and the Interim  
21 Implementation Order signed by the Superior Court, DWR and the SWP Contractors executed  
22 additional contract amendments referenced in attachment A of the Settlement Agreement, and  
23 began the interim implementation of several additional terms of the agreement, including the  
24 transfer of Kern Fan Element on an interim basis. DWR commenced its review of the new  
25 agreement, referred to here as the Monterey Plus Amendments.

26 73. DWR certified the final EIR for the Monterey Plus Amendments in February,  
27 2010, approved the Amendments on May 4, 2010, and issued a Notice of Determination

1 (“NOD”) on May 5, 2010.

2 74. The NOD states that the “Monterey Plus proposed project is to continue  
3 operation under the existing Monterey Amendment to the State Water Project and the existing  
4 Settlement Agreement entered in *PCL v. DWR*, (2000) 83 Cal.App.4th 892, in accordance with  
5 the terms of those documents as previously executed by the Department and other parties to  
6 those documents.”

7 75. For the purposes of this Action, the key sections of the Monterey Plus  
8 Amendments are as follows:

9 ***Article 52***

10 76. The Monterey Plus Amendments add Article 52 to the long-term SWP contracts.  
11 Article 52 authorizes the transfer of the Kern Fan Element (one of eight elements comprising  
12 the Kern Water Bank) from DWR to KCWA. Article 52 states: “The State shall convey to  
13 [KCWA] in accordance with the terms set forth in the agreement between [DWR] and  
14 [KCWA] entitled ‘Agreement for the Exchange of the Kern Fan Element of the Kern Water  
15 Bank’ ..., the real and personal property described therein.”

16 ***Article 53***

17 77. The Monterey Plus Amendments add Article 53 to the SWP Contracts. Article  
18 53 permits the transfer of 130,000 acre-feet of annual Table A water from “Agricultural  
19 Contractors” to “Urban Contractors” or non-contractors.

20 78. Under Article 53, the “Agricultural Contractors” include the State of California  
21 as well as Kings County, DRWD, Empire West Side Irrigation District, KCWA, Oak Flat  
22 Water District and Tulare Lake Basin Water Storage District.

23 79. Article 53(h) states that “individual contractors may transfer entitlements among  
24 themselves in amounts in addition to those otherwise provided for in this article.”

25 80. Article 53(i) provides for temporary decreases totaling 45,000 acre-feet of Table  
26 A amounts for two agricultural contractors, KCWA (40,670 AF) and DRWD (4,330 AF), to  
27 last until the end of the Project repayment period. Under Article 53, “the 45,000 acre-feet to be

1 relinquished by KCWA and DRWD thereafter shall be deemed to be costs of project  
2 conservation facilities and included in the Delta Water Charge for all contractors in accordance  
3 with the provisions of Article 22 [of the SWP contracts].”

4 **Transfer of the Kern Water Bank to Kern Water Bank Authority**

5 ***DWR – KCWA Transfer***

6 81. On December 13, 1995, DWR and KCWA signed the “Agreement for the  
7 Exchange of the Kern Fan Element of the Kern Water Bank,” (“Exchange Agreement”) which  
8 gave KWBA ownership and operational control of the Kern Water Bank. Subject to the  
9 conditions of the Exchange Agreement, KCWA re-transferred the Kern Fan Element to KWBA  
10 the very next day.

11 82. The Exchange Agreement states that DWR shall convey the Kern Fan Element to  
12 “agricultural contractors,” which includes KCWA, as “provided by” Article 52 of the  
13 Monterey Amendments.

14 83. The Exchange Agreement states that KCWA will “procure and deliver” 45,000  
15 acre-feet of annual agricultural “entitlements” to the State, and that “the exchange of those  
16 water entitlements and other provisions of the Monterey Amendments shall be the  
17 consideration for the transfer of the Property.”

18 84. The 45,000 acre-feet of Table A water that was transferred in exchange for the  
19 Kern Fan Element was paper water: water that had never been delivered to KCWA or DRWD  
20 in the past and would likely never be delivered in the future due to the lack of completion of  
21 the SWP. Relinquishing this 45,000 acre-feet allotment also relieved KCWA and DRWD of  
22 financial obligations they would otherwise have had to pay annually to the state.

23 85. Article 2.2 of the Exchange Agreement states that the Agency shall procure and  
24 deliver to the state “retired water entitlements” “as partial consideration for the transfer of the  
25 Property and the implementation of the Monterey Principles.” Article 2.2 of the Exchange  
26 Agreement also references three million dollars to be paid by the State to KCWA to “limit the  
27 State’s environmental liability.”

1           86.     Article 3.1 of the Exchange Agreement provides that on closing day, “Agency  
2 shall receive from the Title Company a CLTA Owner’s Policy of Title Insurance with liability  
3 in the amount of \$33,628,000, insuring fee simple title to the Real Property and Improvements  
4 [...].”

5           87.     Article 3.3 of the Exchange Agreement provides that KCWA may immediately  
6 transfer the Kern Fan Element to “Direct Transferees,” including a joint powers agency.

7           88.     Upon executing the Exchange Agreement, ownership and control of Kern Fan  
8 Element was transferred from DWR to KCWA. As specified in both the Exchange Agreement  
9 and the Monterey Amendments, the transfer was subject to execution and final approval of the  
10 Monterey Amendments.

11          89.     Article 4.3 of the Exchange Agreement describes how the exchange of the Kern  
12 Water Bank is subject to several conditions, including completion of environmental review of  
13 the Monterey Amendments under CEQA and CESA and the expiration of the CEQA statute of  
14 limitations (with no challenge being filed or a final judgment being entered on such a  
15 challenge).

16          90.     Article 6 of the Exchange Agreement provides for the indemnification of the  
17 state against future claims of environmental damage in exchange for \$3 million in  
18 consideration to be paid by the State to KCWA. The indemnification is “excluding any  
19 liability to the extent that it arises from Undisclosed Environmental Conditions.” Under  
20 Article 6 of the Exchange Agreement, KCWA becomes liable for environmental damage  
21 caused by Kern Water Bank.

22          91.     Article 13.7 of the Exchange Agreement states that “this Agreement and  
23 Monterey Amendments constitute the entire agreement between the parties with respect to the  
24 exchange of the Property and supersede all prior and contemporaneous agreements and  
25 understandings between the parties hereto relating to the subject matter hereof.”

26           ***KCWA – KWBA Transfer***

27          92.     Almost immediately after obtaining ownership and control of the Kern Water

1 Bank, KCWA transferred it to KWBA, the transfer that is subject of this action. The purpose  
2 and operational structure of KWBA are set forth in a Joint Powers Agreement, most recently  
3 revised in 2005.

4 93. KWBA is comprised of DRWD, KCWA, Semitropic Water Storage District,  
5 Tejon-Castac Water District, Westside Mutual Water Company, and Wheeler Ridge-Maricopa  
6 Water Storage Districts. While the exact ownership structure of all member entities is not  
7 known by Petitioners, the member entities are mostly, if not all, controlled by one or two  
8 private entities.

9 94. Article II of the KWBA Joint Powers Agreement dictates that management of  
10 KWBA is proportional to the share of costs and benefits of the project held by each member  
11 entity, and that any member entity contributing over 25% of costs receives two seats on the  
12 Authority's board.

13 95. Article V of the KWBA Joint Powers Agreement sets forth the ownership  
14 structure ("Percentage Share of Costs and Benefits of Project") of KWBA as follows: Westside  
15 Mutual Water Company (48.06%), Wheeler Ridge-Maricopa Water Storage District (24.03%),  
16 KCWA (9.62%), DRWD (9.62%), Semitropic Water Storage District (6.67%), and Tejon-  
17 Castac Water District (2.00%).

18 96. Westside Mutual Water Company is a subsidiary of Paramount Farming  
19 Company LLC, which is owned by Roll International.

20 97. Paramount Farming Company LLC and/or Roll International own the majority of  
21 land within the Dudley Ridge Water Storage District, maintaining effective control of that  
22 district under water district voting laws. Pursuant to Article V of the KWBA Joint Powers  
23 Agreement, Roll International, through its ownership and/or control of DRWD and Westside  
24 Mutual Water Company, owns and/or controls approximately 58% of KWBA.

25 98. Tejon-Castac Water District is entirely controlled by Tejon Ranch Company, as  
26 the sole landowner within the district's borders.

27 99. Tejon Ranch Company is a majority landowner in the Wheeler Ridge – Maricopa

1 Water Storage District, giving Tejon Ranch Company control of the district.

2 100. Tejon Ranch Company, through its control of Tejon-Castac Water District and  
3 the Wheeler-Ridge – Maricopa Water Storage District, owns and/or controls 26.03% of the  
4 Kern Water Bank Authority.

5 101. Tejon Ranch Company and Roll International together are responsible for the  
6 “costs and benefits” of approximately 84% of KWBA.

7 102. Since KCWA’s transfer of the Kern Water Bank to KWBA, the Kern Water  
8 Bank has been operated for the primary benefit of its member entities.

9 103. On at least one occasion since the since KCWA’s transfer of the Kern Water  
10 Bank to KWBA, Roll International, through its Westside Mutual Water Company, has offered  
11 water stored in Kern Water Bank to nut farmers as an explicit incentive to do more business  
12 with Cal Pur Nuts, another subsidiary and/or division of Roll International. Water was offered  
13 to the farmers by Westside Mutual Water Company at below-market rates in exchange for the  
14 farmers’ promise to process their nuts with Cal Pur Nuts.

15 104. Since KCWA’s transfer of the Kern Water Bank to KWBA, KCWA has installed  
16 numerous wells, including wells on Kern Water Bank property, for the purpose of drawing  
17 from a deep-well groundwater aquifer underlying (and separated by a naturally impermeable  
18 layer from) the Kern Water Bank. Known as the Pioneer Project, these wells are meant to  
19 charge the Kern Water Bank banking facilities. KCWA’s Pioneer Project thus functions to  
20 extract public groundwater and place it under control of Kern Water Bank Authority, a  
21 privately-controlled entity.

22 105. Since KCWA’s transfer of the Kern Water Bank to KWBA, at least one major  
23 housing project—Tejon Mountain Village on Tejon Ranch—has been approved that relies on  
24 water stockpiled in the Kern Water Bank for a major part of its water supply. Tejon Mountain  
25 Village proposes to obtain its water from the Tejon-Castac Water District. Tejon-Castac Water  
26 District is a joint partner and has an ownership share of KWBA. Tejon-Castac Water District  
27

1 expects to draw 4,002 acre-feet a year of water from the Kern Water Bank to supply Tejon  
2 Mountain Village and other real estate development on Tejon Ranch.

3 106. Since KCWA's transfer of the Kern Water Bank to KWBA, water agencies,  
4 districts and corporations have stored hundreds of thousands acre-feet in SWP allotments in  
5 Kern Water Bank.

6 107. The transfer of the Kern Water Bank to KWBA has caused harm to the SWP,  
7 including, but not limited to, eliminating the major underground storage facility for southern  
8 California as contemplated by the California Legislature in Water Code § 11258; and has  
9 enabled and caused harm to the environment, including, but not limited to, encouraging  
10 speculative real estate development and the planting of permanent crops both dependent on  
11 misuse of "interruptible" or "surplus" seasonal water flows.

12 108. DWR initiated and managed an Environmental Water Account pursuant to its  
13 obligations under CalFED (a cooperative water management program between California and  
14 the federal government). The Environmental Water Account was a water storage program  
15 managed by DWR that purchased water to mitigate the harm caused by the pumping of water  
16 from the Bay-Delta. Water was purchased from a number of sources, including from SWP  
17 Contractors and including water stored in the Kern Water Bank.

18 109. Since KCWA's transfer of the Kern Water Bank to the KWBA, at least \$8.6  
19 million has been spent, credited or refunded to water districts and corporations by the State  
20 towards purchases for the Environmental Water Account. Main recipients of the account's  
21 funds include KCWA, Tejon-Castac Water District, Buena Vista Water Storage District,  
22 Paramount Farms, and Blackwell Land LLC. Paramount and Blackwell have each received  
23 over \$3 million in payments, refunds and credits from the sale of Environmental Water  
24 Account water. Much, if not all, of the water re-sold to the State was stored in the Kern Water  
25 Bank. Conversely, if the State had retained control of the Kern Water Bank, it could have  
26 stored the water itself and avoided payments to the KWBA members.

1 **FIRST CAUSE OF ACTION**

2 **Reverse Validation Action**

3 **(Govt. Code §§ 53510, 53511, 17700(c) and Code Civ. Proc. § 860 et seq.)**

4 **(Cal. Const. Art. 16, and Civ. Code §§ 1550, 1605, and 1667)**

5 110. Petitioners hereby incorporate by reference each and every allegation set forth in  
6 Paragraphs 1 through 143, inclusive.

7 111. An agency of the state may bring an action pursuant to Gov. Code § 17700(a)  
8 and Code Civ. Proc. § 860 to determine the validity of any matter which under any other law is  
9 authorized to be determined pursuant thereto. Government Code § 17770 permits the state or  
10 any state board, department, agency, or authority to bring an action to determine the validity of  
11 its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to Code Civ.  
12 Proc. § 860.

13 112. Pursuant to Gov. Code §§ 53510 and 53511, the validating procedure of Code  
14 Civ. Proc. § 860 is extended to any county, city, city and county, public district or any public  
15 or municipal corporation, public agency and public authority, any of whom may bring an  
16 action to determine the validity of bonds, warrants, contracts, obligations, or evidences of  
17 indebtedness.

18 113. If no proceedings have been brought by the relevant agency, any interested  
19 person may bring an action within the time and in the court specified by Code Civ. Proc. § 860  
20 to determine the validity of the contract. (Code Civ. Proc. § 863.) These actions brought by  
21 interested persons are called Reverse Validation Actions.

22 114. Plaintiffs bring this Reverse Validation Action as interested persons in order to  
23 challenge the validity of the fee-simple transfer between KCWA and KWBA that conveys the  
24 Kern Water Bank to KWBA, a privately-controlled Joint Powers Authority with public and  
25 private members that is effectively controlled by private entities.

26 115. This Reverse Validation Action is timely pursuant to Code of Civ. Proc. §§ 860,  
27 863, and 864 and Article 13.7 of the Exchange Agreement because the operative



1 “authorization” for the Kern Water Bank two-part transfer was not complete and final until  
2 publication of the NOD for the Monterey Plus Amendments on May 5, 2010.

3 116. KCWA’s transfer of the Kern Water Bank to KWBA violates multiple provisions  
4 of California law and was arbitrary, capricious, and/or entirely lacking in evidentiary support.

5 117. Petitioners plead in the alternative for a writ of mandamus pursuant to Cal. Civ.  
6 Code § 1085.

7 118. The transaction is invalid on the following grounds:

8 **Unconstitutional Gift of Public Funds**

9 119. An agency of the State of California may not make any gift or authorize the  
10 making of any gift of any public money or thing of value to any individual, municipal or other  
11 corporation. (Cal. Const. Art. 16 § 6).

12 120. The Kern Fan Element is and was a public “thing of value,” estimated to be  
13 worth at least \$74 million dollars in development costs alone, not including inflation, and not  
14 including the \$28 million worth of water stored in the Bank at the time of transfer.

15 121. KCWA is an agency of the State of California and acted as an intermediary in the  
16 transfer of the Kern Fan Element to KWBA.

17 122. KWBA is a joint powers authority with a majority of its interests controlled by  
18 Roll International, which is an “individual, municipal or other corporation” under Article 16 §  
19 6 of the California Constitution.

20 123. Tejon Ranch Corporation, an “individual, municipal or other corporation” under  
21 Article 16 § 6 of the California Constitution, controls a minority share of the Kern Water Bank.

22 124. The transfer does not serve a public purpose. Under the KWBA Joint Powers  
23 Agreement, the benefits derived from use of Kern Water Bank are proportionate to the  
24 ownership interests. Therefore, the Kern Water Bank provides the majority of its benefits to  
25 Roll International and Tejon Ranch Corporation.

1           125. By the terms of its Joint Powers Agreement, the current operation of Kern Water  
2 Bank is for a private purpose, with any public benefit incidental to the benefits of the KWBA  
3 members.

4           126. KCWA received no actual consideration for the transfer of the Kern Fan Element  
5 to KWBA.

6           127. The transfer by KCWA to KWBA constitutes a “gift” of a “thing of value” in  
7 violation of Article 16, § 6 of the California Constitution.

8           128. A contract or agreement which executes an unconstitutional act is void and  
9 unenforceable. (Cal. Civ. Code §§ 1550(c) and 1667.)

10          129. Due to its violation of Art § 16, Sec 6, the transfer of the Kern Water Bank from  
11 KCWA to KWBA is invalid, void and unenforceable.

12 **Illusory Consideration**

13          130. A sufficient cause or consideration is an essential element to formation of a valid  
14 contract. (Cal. Civ. Code §§ 1550 and 1605.) Consideration may not be so one-sided as to be  
15 unconscionable. California courts are also required to consider the relative value of  
16 consideration in a transaction alleged to be voidable under fraudulent transfer laws.

17          131. The transfer of Kern Water Bank constitutes a financial transaction, and the  
18 Monterey Plus Amendments and the Exchange Agreement together constitute a financial  
19 instrument or contract, for which consideration of 45,000 acre-feet in retired water was  
20 purported to be paid in exchange for the real property known as Kern Fan Element and \$3  
21 million in environmental indemnification paid by the State.

22          132. The 45,000 acre-foot temporary retirement of water executed by the Monterey  
23 Plus Amendments was not a legal detriment to KCWA, which had no realistic expectation of  
24 receiving this “paper water.” Instead, the “retirement” of 45,000 acre-feet for which KCWA  
25 was obligated to re-pay the state operated as a second inducement for KCWA to enter into the  
26 exchange agreement. This “consideration” is so one-sided as to be unconscionable.

27

1 133. KWBA provided no consideration to either DWR or KCWA in return for  
2 obtaining ownership and control of the Kern Water Bank.

3 134. Due to the unconscionable, illusory and/or non-existent consideration, the  
4 transfer of the Kern Water Bank violates Cal. Civ. Code §§ 1550, 1605, and 1667 and is  
5 invalid.

6  
7 **SECOND CAUSE OF ACTION**

8 **Mandate Action for Violation of the California Constitution**

9 **(Code Civ Proc. §§ 1085, 1094.5; Cal. Const. Art. 16, § 6; Civ. Code §§ 1550, 1605, 1667)**

10 135. Petitioners hereby incorporate by reference each and every allegation set forth in  
11 Paragraphs 1 through 143, inclusive.

12 136. A writ of mandate may be issued by any court to any inferior tribunal,  
13 corporation, board, or person, to compel the performance of an act which the law specially  
14 enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a  
15 party to the use and enjoyment of a right or office to which the party is entitled, and from  
16 which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person.  
17 (Code Civ. Proc. § 1085.)

18 137. Petitioners petition this Court to issue a writ directing Kern County Water  
19 Agency to set aside its approval of its transfer of Kern Water Bank to Kern Water Bank  
20 Authority based on the following grounds:

21 **Unconstitutional Gift of Public Funds**

22 138. An agency of the State of California may not make any gift or authorize the  
23 making of any gift of any public money or thing of value to any individual, municipal or other  
24 corporation. (Cal. Const. Art. 16 § 6.)

25 139. As explained in Plaintiff's First Cause of Action, the transfer of the Kern Fan  
26 Element by KCWA to KWBA constitutes a "gift" of a "thing of value" in violation of Article  
27 16, § 6 of the California Constitution.

1           140. A contract or agreement which executes an unconstitutional act is void,  
2 unlawful, and unenforceable. (Cal. Civ. Code §§ 1550(c) and 1667.)

3           141. Due to its violation of Art § 16, Sec 6, the two-part transfer of the Kern Water  
4 Bank is invalid, void and unenforceable.

5 **Illusory Consideration**

6           142. A sufficient cause or consideration is an essential element to formation of a valid  
7 contract. (Cal. Civ. Code §§ 1550 and 1605.) Consideration may not be so one-sided as to be  
8 unconscionable. California courts are also required to consider the relative value of  
9 consideration in a transaction alleged to be voidable under fraudulent transfer laws.

10           143. As described in Petitioners' first Cause of Action, the transfer agreement is based  
11 on unconscionable and illusory consideration provided by KCWA, in violation of Cal. Civ.  
12 Code §§ 1550, 1605, and 1667 and is therefore invalid.

13  
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioners pray for relief as follows:

16           1. That the Court find the two-part transfer of the Kern Water Bank from KCWA to  
17 KWBA is invalid, illegal, void *ab initio*, voidable, and not binding and not and will not be in  
18 conformity with applicable provisions of law;

19           2. That the court issue an alternative writ of mandamus setting aside the transfer of  
20 the Kern Water Bank from KCWA to KWBA;

21           3. For a complete accounting of the expenditures incurred by the State in its  
22 development of the Kern Fan Element and Kern Water Bank;

23           4. For a complete accounting of the revenue generated by Kern Water Bank  
24 Authority since obtaining operational control over the Kern Fan Element.

25           5. For the imposition of direct or constructive trust conditions in order to remedy  
26 the adverse consequences of KCWA's and KWBA's use of the Kern Water Bank and restore  
27 lost revenues and accountability to the public and the State of California;

- 1       6.     For costs of the suit;
- 2       7.     For attorney's fees pursuant to the Code of Civil Procedure § 1021.5; and
- 3       8.     For such other and further relief as the Court deems just and proper.

4  
5  
6  
7   DATED: July 2, 2010

By: Adam Keats  
Adam Keats  
John Buse  
Adam Lazar  
CENTER FOR BIOLOGICAL DIVERSITY  
Attorneys for Plaintiffs / Petitioners

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**VERIFICATION**

I have read the foregoing Petition for Writ of Mandate and know its contents.

I am the Executive Director of California Water Information Network, which is a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on July 2, 2010, at Santa Barbara, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Carolee Krieger  
California Water Information Network