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10 THE SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF MONTEREY

12 LANDWATCH MONTEREY COUNTY,

13 Petitioner,

14 vs.

15 MARINA COAST WATER DISTRICT, and
16 DOES 1 through 25, inclusive;

17 Respondents.

Case No.: 18CV000877

PETITION FOR WRIT OF MANDATE

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

1 **INTRODUCTION**

2 This Petition challenges the February 20, 2018 actions of Respondent MARINA COAST
3 WATER DISTRICT (“MCWD”) adopting Resolution No. 2018-09 that included adoption of an Initial
4 Study/Negative Declaration for the Ord Community Sphere of Influence Amendment and Annexation
5 (“Annexation”) under the California Environmental Quality Act (“CEQA”); making findings that the
6 Annexation is not a project subject to CEQA; making findings that the Annexation is exempt from
7 CEQA; authorizing staff to submit an application for the Annexation to the Local Agency Formation
8 Commission of Monterey County (“LAFCO”); and directing staff to hold off submitting an application
9 for the Annexation to LAFCO for 30 days to further work with Seaside County Sanitation District.
10 Petitioner LANDWATCH MONTEREY COUNTY (“LandWatch”) alleges that MCWD’s actions
11 violate applicable provisions of CEQA, Public Resources Code §§ 21000 et seq.

12 LandWatch seeks a writ of mandate under Code of Civil Procedure §§ 1085 and/or 1094.5
13 commanding MCWD to set aside and rescind Resolution No. 2018-09, including adoption of the Initial
14 Study/Negative Declaration for the Annexation, its CEQA findings regarding the Annexation, and its
15 authorization of an application to LAFCO for the Annexation. LandWatch also seeks an order granting
16 temporary injunctive relief and/or a stay of the effect of MCWD’s actions during the pendency of these
17 proceedings, including an order suspending MCWD’s authority to take any further actions regarding the
18 Annexation and an order enjoining action by the City and Real Party that could result in changes to the
19 physical environment. LandWatch seeks an award of costs and attorney’s fees under Code of Civil
20 Procedure § 1021.5, together with any other relief the Court deems necessary and proper.

21 In support whereof, LandWatch alleges:

22 **PARTIES**

23 **LandWatch Monterey County**

24 1. Petitioner LANDWATCH MONTEREY COUNTY is a California non-profit public
25 benefit corporation exempt from federal income taxation under Section 501(c)(3) of the U.S. Internal
26 Revenue Code. Its principal place of business is Salinas, California. LandWatch’s organizational
27 purpose is to promote sound land use planning and legislation at the city, county, and regional levels, to
28 combat urban sprawl, and to promote livability in the region’s cities and towns, through public policy

1 development, advocacy, and education. LandWatch is dedicated to preserving economic vitality, high
2 agricultural productivity, and environmental health in Monterey County by encouraging effective
3 public participation in the land use planning process.

4 2. LandWatch's members, directors, and staff include residents, taxpayers, and electors in
5 the MCWD service area and Monterey County who currently enjoy the multitude of residential,
6 vocational, aesthetic, recreational, and health benefits stemming from the current state of the area
7 include in and affected by the Annexation. These include: relatively preserved natural resources;
8 unobstructed views of the natural landscape; recreational access to and use of hiking and equestrian
9 trails, open space, and parks; and water supply, water quality, carbon sequestration, and traffic
10 conditions significantly better than those they will experience if the Annexation proceeds.

11 3. LandWatch's members, directors, and staff have a clear and present right to, and
12 beneficial interest in, MCWD's performance of its duties to comply with CEQA. As citizens,
13 homeowners, taxpayers, and electors, LandWatch's members, directors, and staff are within the class of
14 persons to whom MCWD owes such duties.

15 4. LandWatch's members, directors, and staff will also suffer direct injury as a result of the
16 adverse environmental, aesthetic, and land use impacts caused by the Annexation. These include
17 impacts to water supply, impacts to water quality, and impacts from induced growth, such as the
18 permanent loss of currently undeveloped open space, blighting of the area's landscape, air pollution
19 associated with increased vehicle traffic, permanent loss of habitat for plant and animal species
20 including species protected under state and federal law, loss of recreational opportunities, increased
21 traffic congestion in the area, reduced carbon sequestration, and an overall decrease in quality of life.

22 5. By this action, LandWatch seeks to protect the interests of its members, directors, and
23 staff, and to enforce a public duty owed to them by MCWD. Because the claims asserted and the relief
24 sought in this petition are broad-based and of a public as opposed to a purely private or pecuniary
25 nature, direct participation in this litigation by LandWatch's individual members is not necessary.

26 6. LandWatch presented comments to MCWD opposing the Annexation prior to the public
27 hearings culminating in the MCWD's February 20, 2018 action on Resolution No. 2018-09.

28 LandWatch and its members have actively participated in the legislative and administrative actions

1 involving the Fort Ord Reuse Authority and development within the Ord community within the former
2 Fort Ord, including, e.g., the reassessment of the Fort Ord Reuse Plan, determinations of consistency
3 for the 2010 Monterey County General Plan, the proposed Whispering Oaks development, and the
4 proposed Monterey Downs project.

5 **Marina Coast Water District**

6 7. LandWatch is informed and believes that Respondent MARINA COAST WATER
7 DISTRICT (“MCWD”) is a County Water District pursuant to Water Code §§ 31000 et seq., formed in
8 1960 to provide services including potable water supply.

9 8. On February 20, 2018, MCWD, through its Board of Directors, adopted Resolution No.
10 2018-009, adopting the Initial Study/Negative Declaration for the Annexation, making CEQA findings
11 regarding the Annexation, and authorizing staff to submit an application to LAFCO for the Annexation.
12 MCWD has acted as the lead agency responsible under CEQA for evaluating the environmental
13 impacts of the Annexation.

14 **Does**

15 9. LandWatch currently does not know the true names of DOES 1-25 inclusive, who may
16 have some interest in the action such that they may be respondents or real parties, and therefore names
17 them by such fictitious names. LandWatch will seek leave from the court to amend this petition to
18 reflect the true names and capacities of DOES 1-25 inclusive once ascertained.

19 **JURISDICTION AND VENUE**

20 10. This action is brought pursuant to Public Resources Code (“P.R.C.”) §§ 21167, 21168,
21 and 21168.5 and Code of Civil Procedure §§ 1085 and 1094.5. Venue is proper in the County of
22 Monterey under Code of Civil Procedure §§ 393 and 395.

23 **BACKGROUND FACTS, PROCEDURAL HISTORY, AND AGENCY ACTION**

24 **Aquifer Conditions**

25 11. Ground water pumping in the Salinas Valley Groundwater Basin (“Basin”) since the
26 1930’s has exceeded recharge, causing seawater intrusion as inland groundwater elevations dropped
27 below sea level, permitting the hydraulically connected seawater to flow inland. Seawater intrusion has
28

1 advanced inland since the 1930's, rendering significant areas of groundwater unusable for irrigation or
2 domestic uses.

3 12. Projects to mitigate seawater intrusion have focused on increasing Basin recharge and on
4 reducing pumping from the 180-foot and 400-foot Aquifers proximate to the coastal area in which
5 seawater intrusion is advancing. Pumping proximate to the coastal seawater intrusion area contributes
6 more to seawater intrusion than the same amount of pumping farther inland.

7 13. Due to seawater intrusion, wells serving Fort Ord and the Ord community have had to be
8 abandoned and new wells have had to be drilled farther inland. MCWD contends that its current
9 groundwater pumping to support demand from the Ord community includes some pumping from the
10 400-foot Aquifer proximate to the seawater intrusion front.

11 14. Despite groundwater management projects intended to halt it, seawater intrusion
12 continues to advance due to continuing overdraft conditions. For example, the most recent mapping of
13 the seawater intrusion advancement, prepared by the Monterey County Water Resources Agency
14 "(MCWRA)" for the period from 2013-2015, shows substantial new areas in which the groundwater
15 has been degraded.

16 15. MCWD also pumps groundwater from the 900-foot or Deep Aquifer. Recent studies
17 have determined that the Deep Aquifer consists of ancient groundwater and is not recharged except
18 incidentally by leakage from the overlying 180-foot and 400-foot Aquifers. Hydrologists have
19 concluded that increased pumping of the Deep Aquifer will cause its depletion, will induce further
20 seawater intrusion in the 180-foot and 400-foot Aquifers, and may result in seawater intrusion of the
21 Deep Aquifer itself.

22 16. In 2017, MCWRA recommended a moratorium on new wells in the Deep Aquifer and
23 new wells in the 400-foot Aquifer proximate to the seawater intrusion front because of its concerns
24 regarding seawater intrusion and harm to the Deep Aquifer.

25 **Fort Ord Reuse Plan Water Supply Policies and Mitigation**

26 17. In 1994, the California Legislature authorized creation of the Fort Ord Reuse Authority
27 ("FORA") to facilitate disposition and reuse of Fort Ord for civilian purposes. Gov. Code §§ 6750 et
28 seq. The FORA Act required FORA to adopt the Fort Ord Reuse Plan before any development of the

1 Ord community by its member agencies. FORA is governed by a Board of Directors consisting of
2 representatives of its member agencies, which include the County of Monterey and cities with territory
3 within or proximate to Fort Ord.

4 18. In 1997, FORA adopted the Fort Ord Reuse Plan purporting to provide a plan for the re-
5 use and development of the Ord community in former Fort Ord.

6 19. The Environmental Impact Report (“EIR”) for the Fort Ord Reuse Plan acknowledges
7 that pumping in the 180-foot and 400-foot Aquifers has “exceeded safe yield, as indicated by seawater
8 intrusion and water levels below sea level.” The EIR for the Fort Ord Reuse Plan states that the
9 “conditions of the 900-foot aquifer are uncertain,” including the safe yield of the aquifer and whether
10 the aquifer is in overdraft.

11 20. The Fort Ord Reuse Plan implementation provisions include the Development and
12 Resource Management Plan (“DRMP”) that is intended to limit the level of development to the
13 available resources, including water resources. The DRMP allocates the “existing potable water
14 supply” of 6,600 afy to the member agencies for future development. The DRMP assigns
15 responsibility for managing water supply allocation to FORA.

16 21. The Fort Ord Reuse Plan provides specific policy requirements purporting to ensure
17 adequate, timely mitigation of seawater intrusion. Those provisions do not permit reliance on
18 continued groundwater pumping to support new development if seawater intrusion is not halted. For
19 example, Policy B-1 requires that the FORA members “shall ensure additional water supply.” Policy
20 B-2 requires conditioning approval of development projects on verification of an “assured long-term
21 water supply.” Policy C-3 requires the member agencies cooperate with MCWRA and the Monterey
22 Peninsula Water Management District (“MPWMD”) “to mitigate further seawater intrusion based on
23 the Salinas Valley Basin Management Plan.” Program C-3.1 requires the member agencies to work
24 with the water agencies “to estimate current safe yields within the context of the Salinas Valley Basin
25 Management Plan for those portions of the former Fort Ord overlying the Salinas Valley and Seaside
26 groundwater basins, to determine available water supplies.”

27 22. The EIR for the Fort Ord Reuse Plan explains that Policies B-1, B-2, and C-3 are
28 intended to “affirm the local jurisdictions’ commitment to preventing further harm to the local aquifers

1 . . . by limiting development in accordance with the availability of secure supplies.” The explicit
2 provisions for the determination of safe yield, and for the acceleration of water supply projects if 6,600
3 afy cannot be supplied via groundwater pumping without further seawater intrusion, mean that member
4 agencies may not simply rely on their allocation of a portion of the 6,600 afy of groundwater pumping
5 if seawater intrusion continues. The EIR for the Fort Ord Reuse Plan provides that reliance on
6 groundwater pumping was permitted only “provided that seawater intrusion conditions are not
7 exacerbated (Policy C-3).”

8 **MCWD Agreement to Provide Ord Community Water Supply under FORA oversight**

9 23. LandWatch is informed and believes that in 1998, FORA and MCWD entered into the
10 Water/Wastewater Facilities Agreement, in which FORA agreed to permit MCWD to acquire the Fort
11 Ord water distribution system from the Army and MCWD agreed to provide water under FORA’s
12 supervision and oversight.

13 24. In the 1998 Water/Wastewater Facilities Agreement, FORA retained primary authority
14 over Ord community water supply management, including authority to administer groundwater supply
15 capacity rights consistent with the 1993 Army/MCWRA Annexation Agreement, to determine what
16 additional facilities are necessary, to approve capital spending budgets, and to oversee MCWD’s
17 operations through a FORA staff Water/Wastewater Oversight Committee. The 1998 Facilities
18 Agreement provides that MCWD may not pump more than 1,400 afy from the Deep Aquifer for use on
19 Fort Ord.

20 25. LandWatch is informed and believes that in 2001, consistent with the provisions of the
21 1998 Water/Wastewater Facilities Agreement, FORA granted the Fort Ord facilities to MCWD in the
22 Assignments Of Easements On Former Fort Ord and Ord Military Community, County of Monterey,
23 And Quitclaim Deed For Water And Wastewater Systems. This Assignment requires MCWD to
24 assume and comply with the terms and conditions of the 2001 conveyance of the water systems from
25 the Army to FORA in the Easement to FORA for Water And Wastewater Distribution Systems Located
26 On Former Fort Ord, including the obligation “to cooperate and coordinate with parcel recipients,
27 MCWRA, FORA, MCWD, and others to ensure that all owners of property at the former Fort will
28 continue to be provided an equitable supply of water at equitable rates. The meaning of “equitable

1 supply” is not defined. Critically, there is no assurance that the equitable considerations will take into
2 account the environmental impacts of providing that supply.

3 **Termination of FORA and Fort Ord Reuse Plan**

4 26. The 1998 Facilities Agreement term coincides with the legal existence of FORA. Thus,
5 when FORA is dissolved, the terms of the 1998 Water/Wastewater Facilities Agreement will no longer
6 govern provision of water supply to the Ord community.

7 27. The legal existence of FORA and the operation of the Fort Ord Reuse Plan will
8 terminate when the Fort Ord Reuse Act becomes inoperative. The Fort Ord Reuse Authority Act
9 becomes inoperative on June 30, 2020. Gov. Code, § 67700(a).

10 28. Thus, by June 30, 2020, MCWD’s provision of water to the Ord community would no
11 longer be subject to the provisions of the 1998 Water/Wastewater Facilities Agreement, FORA
12 oversight, or the operation of the Fort Ord Reuse Plan.

13 **MCWD’s Annexation of Ord Community Lands**

14 29. LandWatch is informed and believes that, although MCWD has provided water service
15 to the Ord Community under the 1998 Water/Wastewater Facilities Agreement, the Ord community is
16 not included in the MCWD district territory.

17 30. LandWatch is informed and believes that in 2011, MCWD proposed to annex all of the
18 Ord community to the MCWD district. In support of that proposal, MCWD circulated an initial study
19 and proposed negative declaration under CEQA. LandWatch is informed and believes that LAFCO
20 and others objected to the scope of the proposed annexation, and MCWD did not pursue it.

21 31. In December, 2017 MCWD circulated a draft Initial Study/Negative Declaration in
22 support of proposed annexation of portions of the Ord community. The draft Initial Study/Negative
23 Declaration was also prepared in support of a proposed MCWD sphere of influence amendment that
24 would include parcels proposed for future development in the cities of Del Rey Oaks, Monterey, and
25 Seaside, and the unincorporated Monterey County.

26 32. The annexation area proposed in 2017 includes developed areas where MCWD is
27 already providing service pursuant to the 1998 Water Wastewater Facilities Agreement. The
28 annexation area also includes undeveloped areas for which neither MCWD nor any other water

1 provider is currently providing water supply service. Some of these undeveloped areas within the
2 annexation area have received development entitlements from local land use jurisdictions; other
3 undeveloped areas within the annexation area have not received land use entitlements.

4 33. Comments on the draft and final Initial Study/Negative Declaration, including
5 comments by LandWatch, objected to MCWD's proposed annexation because it was not supported by
6 adequate CEQA review.

7 34. For example, comments objected to MCWD's contention that the annexation was not a
8 project subject to CEQA and that it was exempt from CEQA. Comments objected that the claim in the
9 Initial Study/Negative Declaration that the annexation and sphere of influence amendment would result
10 in no physical effects on the environment and no change to the provision of potable water was not true.
11 For example, MCWD's annexation was proposed with the expectation that MCWD would increase the
12 amount of water it provides by furnishing water to parcels in the proposed annexation area that are not
13 currently served, including parcels that have no development entitlements. Furthermore, the sphere of
14 influence amendment was proposed with the expectation that MCWD would provide water to
15 foreseeable future development in the sphere of influence expansion area. In fact, the draft Initial
16 Study/Negative Declaration projects that demand for water supply in the Ord community will increase
17 from 3,508 afy in 2020 to 5,574 afy in 2035. This projected increase in demand is attributable to
18 foreseeable future development in the Ord community.

19 35. Comments objected that, with the annexation and amendment of the sphere of influence,
20 MCWD would assume plenary authority over provision of water supply to the Ord community and
21 would no longer be subject to FORA oversight or to the constraints of the Fort Ord Reuse Plan that
22 were intended to mitigate water supply impacts. Indeed, annexation of portions of the Ord Community,
23 and inclusion of all of the developable portions of the Ord community in the MCWD sphere of
24 influence, was proposed with the express expectation that FORA would be dissolved.

25 36. Comments also objected that adoption of the Negative Declaration was improper
26 because there is substantial evidence to support a fair argument that the annexation may result in a
27 significant impact. The evidence includes technical documentation, studies, and two technical
28 memoranda from hydrologist Timothy Parker, which establish that MCWD's increased groundwater

1 pumping to support Ord community development would exacerbate seawater intrusion in the 400-foot
2 Aquifer and cause further depletion of the Deep Aquifer.

3 37. LandWatch and its legal counsel discussed LandWatch's objections to the proposed
4 annexation with MCWD staff and MCWD's legal counsel in two lengthy telephone calls on January
5 16, 2018 and February 16, 2018.

6 38. Despite these objections, MCWD's Board of Directors voted on February 20, 2018 to
7 adopt Resolution No. 2018-09, that included adoption of the Initial Study/Negative Declaration;
8 making findings that the Ord Community Sphere of Influence Amendment and Annexation is not
9 subject to CEQA and is exempt from CEQA pursuant to CEQA Guidelines §§ 15301 (Existing
10 Facilities), 15319 (Annexations of Existing Facilities and Lots for Exempt Facilities), and 15061(b)(3)
11 (the "common sense" exemption); authorizing staff to submit an application to LAFCO for the
12 annexation and sphere of influence amendment; and directing staff to hold off submitting an application
13 to LAFCO for 30 days to further work with Seaside County Sanitation District.

14 39. On February 21, 2018, MCWD filed a Notice of Exemption and a Notice of
15 Determination with the County Clerk, indicating that the Board of Directors had apparently approved
16 the project.

17 40. The agenda for the February 20, 2018 MCWD Board of Directors meeting did not
18 contain adequate notice that the Board would act to approve the project at that meeting, and there was
19 no finding of fact that urgent action was necessary on a matter unforeseen at the time the agenda was
20 posted.

21 41. LandWatch was prejudiced by MCWD's action to approve the project without adequate
22 agenda notice. For example, LandWatch was unable to determine in advance of the February 20, 2018
23 meeting whether the MCWD Board would consider the project as proposed in the draft Initial
24 Study/Negative Declaration or the project as represented in the "Reduced Alternative Map" in
25 Appendix D of the Final Initial Study. LandWatch was unable to determine which future development
26 projects enumerated in the draft Initial Study/Negative Declaration are included in the area covered by
27 the Reduced Alternative Map. Indeed, it remains unclear what area MCWD actually proposes to
28 annex. In addition, LandWatch provided MCWD copies of documents referenced in its letters via

1 electronic media, a thumb drive, on February 20, 2018; MCWD later claimed that it was unable to
2 access those documents, although it acknowledged that it was familiar with them. Because MCWD
3 acted to approve the Project without adequate notice on February 20, 2018, LandWatch was unable to
4 demonstrate to MCWD staff how to access the documents on the thumb drive, or to provide the
5 documents in another form, before MCWD acted.

6 **FIRST CLAIM FOR RELIEF**

7 **(Violations of CEQA)**

8 42. LandWatch here incorporates by reference all preceding paragraphs in their entirety.

9 43. At all times relevant to this action the MCWD was the lead agency responsible for the
10 review and approval of the Ord Community Sphere of Influence Amendment and Annexation (the
11 “Project”) under Public Resources Code § 21067.

12 **Improper finding that action is not a project**

13 44. An activity is a “project” subject to CEQA if it is a discretionary activity undertaken by
14 a public agency that may cause a direct or reasonably foreseeable indirect physical effect on the
15 environment. P.R.C., § 21080.

16 45. By finding that the Project was not subject to CEQA, MCWD prejudicially abused its
17 discretion by failing to proceed as required by CEQA and by failing to make findings that are supported
18 by substantial evidence in the record. For example, the Project will result in increased groundwater
19 pumping compared to existing baseline conditions, and that increased pumping will cause physical
20 effects that include increased seawater intrusion and depletion of the Deep Aquifer.

21 **Improper findings of exemption**

22 46. CEQA permits an agency to rely on an exemption under 14 C.C.R. § 15301 for
23 Operation, Repair, Maintenance, or Minor Alteration of Existing Structures of Facilities only if the
24 proposed activity will result in negligible or no expansion of previous use beyond that existing at the
25 time of the lead agency’s determination.

26 47. By relying on a categorical exemption under 14 C.C.R. § 15301, MCWD prejudicially
27 abused its discretion by failing to proceed as required by CEQA and by failing to make findings that are
28 supported by substantial evidence in the record. For example, the Project will result in increased

1 provision of water supply and groundwater pumping beyond that existing as of MCWD's
2 determination.

3 48. CEQA permits an agency to rely on an exemption under 14 C.C.R. § 15319 for
4 Annexations of Existing Facilities and Exempt Small Parcels only if it is not foreseeable that utility
5 services would extend into the annexed parcels and have the potential to serve a greater capacity than
6 existing uses.

7 49. By relying on a categorical exemption under 14 C.C.R. § 15319, MCWD prejudicially
8 abused its discretion by failing to proceed as required by CEQA and by failing to make findings that are
9 supported by substantial evidence in the record. It is foreseeable that utility services would extend into
10 the annexed parcels and have the potential to serve a greater capacity than existing uses.

11 50. CEQA does not permit an agency to rely on a categorical exemption if there is a
12 reasonable probability of a significant effect on the environment due to unusual circumstances. 14
13 C.C.R. § 15300.2(c).

14 51. By relying on a categorical exemption under 14 C.C.R. § 15301 or under 14 C.C.R. §
15 15319, MCWD prejudicially abused its discretion by failing to proceed as required by CEQA and by
16 failing to make findings that are supported by substantial evidence in the record. Evidence in the
17 record establishes that there is a reasonable probability of significant effects on the environment
18 through increased seawater intrusion, depletion of the Deep Aquifer, and growth inducing impacts
19 caused by extension of utility service to currently undeveloped areas. The fact that MCWD would
20 assume plenary authority to provide and manage increased water supply to new development in the Ord
21 community without the previous constraints of FORA oversight and policies of the Fort Ord Reuse
22 Plan is an unusual circumstance. The fact that MCWD would rely on increased groundwater pumping
23 from the overdrafted and seawater-intruded 400-foot Aquifer or from the depleting Deep Aquifer
24 Aquifers is also an unusual circumstance.

25 52. CEQA does not permit an agency to rely on a categorical exemption if significant
26 cumulative impacts from projects of the same type will result. 14 C.C.R. § 15300.2(b).

27 53. By relying on a categorical exemption under 14 C.C.R. § 15301 or under 14 C.C.R. §
28 15319, MCWD prejudicially abused its discretion by failing to proceed as required by CEQA and by

1 failing to make findings that are supported by substantial evidence in the record. Evidence in the
2 record establishes that there will be significant cumulative impacts from projects of the same type. For
3 example, it is foreseeable that other projects of the same type will cause significant cumulative impacts
4 in the form of seawater intrusion of the 400-foot Aquifer and depletion of the Deep Aquifer.

5 54. CEQA does not permit an agency to rely on the “common sense exemption” under 14
6 C.C.R. § 15061(a)(3) if it can be seen with certainty that there is no possibility that the activity in
7 question may have a significant effect on the environment.

8 55. By relying on the “common sense exemption” under 14 C.C.R. § 15061(a)(3), MCWD
9 prejudicially abused its discretion by failing to proceed as required by CEQA and by failing to make
10 findings that are supported by substantial evidence in the record. Evidence in the record establishes
11 that there will be significant impacts from the Project, including, for example, increased seawater
12 intrusion, depletion of the Deep Aquifer, and growth inducing impacts caused by extension of utility
13 service to currently undeveloped areas.

14 **Improper reliance on negative declaration**

15 56. CEQA permits an agency to rely on a negative declaration only if there is no substantial
16 evidence that the project or any of its aspects may cause a significant effect on the environment. 14
17 C.C.R. §15063(b)(2).

18 57. By relying on a negative declaration, MCWD prejudicially abused its discretion by
19 failing to proceed as required by CEQA and by failing to make findings that are supported by
20 substantial evidence in the record. Evidence in the record establishes that there will be significant
21 impacts from the Project, including, for example, increased seawater intrusion, depletion of the Deep
22 Aquifer, and growth inducing impacts caused by extension of utility service to currently undeveloped
23 areas.

24 **Failure to evaluate impacts**

25 58. An agency must provide an adequate review of potentially significant impacts. 14
26 C.C.R. §§ 15063(d)(3), 15064, 15126, 15126.2, 15130.

27 59. Where an agency cannot rely on a negative declaration or exemption, CEQA requires an
28 agency to evaluate potential impacts of a project, either by preparing an environmental impact report

1 (“EIR”), using a previously prepared EIR, or determining that the project’s effects were adequately
2 evaluated in another appropriate process. 14 C.C.R. §15063(b)(1).

3 60. CEQA requires that an agency relying on information in a previous environmental
4 document must actually incorporate and describe that information to provide an adequate road map to
5 that material and its relevance. *Vineyard Area Citizens for Responsible Growth v. City of Rancho*
6 *Cordova* (2007) 40 Cal.4th 412, 423, 442-443; 14 C.C.R. §15150(c).

7 61. CEQA permits an agency to rely on tiering only if a later negative declaration or EIR
8 states that it is being tiered from an earlier EIR and only if significant impacts have been adequately
9 addressed in the prior EIR. 14 C.C.R. §15152(f), (g).

10 62. MCWD stated that the Initial Study/Negative Declaration for the Project did not tier
11 from prior environmental reviews and did not rely on prior environmental reviews for its conclusions
12 regarding potential environmental impacts.

13 63. MCWD did not provide a road map to the material in prior environmental reviews that
14 the Initial Study/Negative Declaration purported to incorporate by reference.

15 64. None of the prior environmental reviews adequately addressed the impacts of the
16 Project.

17 65. MCWD did not prepare an EIR for the Project, and the Initial Study/Negative
18 Declaration fails to provide an adequate assessment of the potential impacts of the Project.

19 66. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
20 and by failing to make findings that are supported by substantial evidence in the record because it failed
21 to prepare an EIR, to use a previously prepared EIR, or to determine that the Project’s effects were
22 adequately evaluated in another appropriate process.

23 **Piecemealing and inadequate cumulative analysis**

24 67. CEQA requires that an agency evaluate the whole of an action. 14 C.C.R. § 15378.
25 CEQA does not permit an agency to disregard cumulative impacts by chopping up a large project into
26 many smaller ones. *Laurel Heights Improvement Asn. v. Regents of the University of California* (1988)
27 47 Cal3d 376, 396.

1 68. CEQA requires an agency to evaluate cumulative impacts by determining whether there
2 is a significant cumulative impact from the project together with all past, present, and foreseeable future
3 projects with related impacts, and, if so, to determine whether the project makes a considerable
4 contribution. 14 C.C.R. §§ 15064(h), 15065(a)(3), 15130. An agency may not truncate the geographic
5 scope of cumulative analysis to omit projects that cause related effects.

6 69. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
7 and by failing to make findings that are supported by substantial evidence in the record because it failed
8 to include the whole of the action in its analysis. For example, MCWD failed to assess the impacts
9 from extension of water service to foreseeable future development in the area covered by the sphere of
10 influence amendment.

11 70. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
12 and by failing to make findings that are supported by substantial evidence in the record because it failed
13 to provide an adequate cumulative analysis. For example, MCWD failed to assess the cumulative
14 effects of the extension of water service to foreseeable future development in the area covered by the
15 annexation and the sphere of influence amendment. MCWD also failed to assess cumulative effects of
16 the Project together with the effects of groundwater pumping from past, present, and foreseeable future
17 projects outside the Ord community that are supplied with groundwater from the 400-foot and Deep
18 Aquifers.

19 **Other CEQA claims**

20 71. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
21 and by failing to make findings that are supported by substantial evidence in the record because it failed
22 to provide an adequate description of the environmental setting. 14 C.C.R. §§ 15063(d)(2), 15125. For
23 example, the Initial Study/Negative Declaration failed to disclose current information about seawater
24 intrusion and the Deep Aquifer, including the extent of seawater intrusion, the failure of groundwater
25 management projects to halt seawater intrusion, and MCWRA's recommendation for a moratorium on
26 new wells in areas in which MCWD pumps groundwater, including the Deep Aquifer and proximate to
27 the seawater intrusion front.

1 72. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
2 and by failing to make findings that are supported by substantial evidence in the record because it failed
3 to provide analysis that assess the effects of the Project on existing conditions rather than on planned
4 future conditions. 14 C.C.R. §§ 15064(d), 15125(a). For example, the Initial Study/Negative
5 Declaration contends that the Project would have no effect on the environment because, it claims, there
6 would be no change in plans for future development.

7 73. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
8 and by failing to make findings that are supported by substantial evidence in the record because it failed
9 to provide a stable project description that was sufficient to support analysis and inform the public. 14
10 C.C.R. §§ 15063(d)(1), 15124. For example, MCWD revised the description of the area to be annexed
11 without explaining whether the approved annexation area consists of the initially described area or the
12 revised area.

13 74. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
14 and by failing to make findings that are supported by substantial evidence in the record because it
15 adopted mitigation or a project alternative without recirculating the proposed negative declaration for
16 public review and comment. 14 C.C.R. § 15073.5(b). For example, MCWD revised the annexation
17 area to reduce the impact, but failed to recirculate the negative declaration.

18 75. MCWD prejudicially abused its discretion by failing to proceed as required by CEQA
19 and by failing to make findings that are supported by substantial evidence in the record because it failed
20 to identify a water supply for the Project, to acknowledge the uncertainty of a water supply, or to assess
21 the impacts of providing a water supply. *Vineyard Area Citizens for Responsible Growth v. City of*
22 *Rancho Cordova* (2007) 40 Cal.4th 412, 429-434. An agency may not rely on “paper water.” For
23 example, the Initial Study/Negative Declaration relies on the purported availability of a 6,600 afy of
24 water “allocation” without disclosing the impacts of using such an allocation of groundwater or the
25 constraints on the actual availability of that allocation. And although the Initial Study/Negative
26 Declaration mentions some potential replacement water supplies, it fails to provide an adequate
27 evaluation and disclosure of the impacts of possible replacement water supplies.

1 76. CEQA bars project approval “if there are feasible alternatives . . . or mitigation measures
2 available” that would substantially lessen the project’s significant environmental effects. P.R.C., §
3 21002; 14 C.C.R., § 15021(a). A lead agency must describe and evaluate feasible measures for
4 minimizing or avoiding a project’s direct, indirect, and cumulative impacts on the environment.
5 P.R.C., § 21100(b)(3); 14 C.C.R., §§ 15063(d)(4), 15126.4. MCWD prejudicially abused its discretion
6 by failing to proceed as required by CEQA and by failing to make findings that are supported by
7 substantial evidence in the record because it failed to consider, discuss, and impose feasible mitigation,
8 or to consider and adopt feasible alternatives, to lessen the project’s impacts. For example, MCWD
9 failed to limit the annexation area to just those parcels and existing structures to which MCWD is
10 currently providing water service as proposed by LandWatch.

11 77. An agency may adopt a negative declaration only if it finds on the basis of an initial
12 study and any comments received that there is no substantial evidence that the project may have a
13 significant effect on the environment. 14 C.C.R., §§ 15064(f), 15074(b). MCWD prejudicially abused
14 its discretion by failing to proceed as required by CEQA and by failing to make findings that are
15 supported by substantial evidence in the record because its findings in support of the adopting of a
16 negative declaration are not supported by substantial evidence. For example, there is no substantial
17 evidence to support a finding that the project would not result in additional groundwater pumping or
18 that additional groundwater pumping would not result in or contribute to significant impacts.

19
20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 78. This action is brought consistent with the requirements of Public Resources Code §
22 21177 and Code of Civil Procedure §§ 1085 and/or 1094.5. LandWatch objected to the City’s
23 approval of the Project orally and in writing prior to the close of the public hearing on the Project
24 before the issuance of the Notices of Determination. LandWatch and/or other agencies, organizations,
25 and/or individuals raised the legal deficiencies asserted in this petition orally or in writing prior to the
26 close of the public hearing on the Project before the issuance of the Notices of Determination.
27 LandWatch and its counsel spoke to MCWD and its counsel by telephone on two occasions to ask for
28 relief.

1 79. LandWatch has performed all conditions precedent to filing this action by complying
2 with the requirements of Public Resources Code § 21167.5 in serving notice of the commencement of
3 this action by mail on March 7, 2018 and by e-mail on March 8, 2018.

4 80. Pursuant to Government Code § 54960.1, LandWatch Monterey County demanded on
5 March 1, 2018 that MCWD cure or correct its action on February 20, 2018 to approve the Project in
6 violation of the Brown Act.

7 81. As of March 9, 2018, LandWatch has had no response from MCWD regarding
8 LandWatch's Brown Act cure or correct letter or regarding resolution of LandWatch's objections to
9 MCWD's CEQA violations.

10 **INADEQUATE REMEDY AT LAW**

11 82. LandWatch declares that it has no plain, speedy, and adequate remedy in the ordinary
12 course of law for the improper action of the City.

13 **NECESSITY FOR TEMPORARY RELIEF**

14 83. If the Project is allowed to proceed prior to the Court's final judgment on the merits,
15 LandWatch and the environment will be greatly, permanently and irreparably injured from the resulting
16 unmitigated environmental, aesthetic, recreational, and land use impacts.

17 84. Under Code of Civil Procedure § 1094.5(g), this Court may issue a stay order during the
18 pendency of the proceedings unless it is satisfied that a stay would be against the public interest.
19 Imposition of a stay would not be against the public interest in that the public will derive no benefit
20 from the Project prior to the Court's final judgment.

21 85. Under Code of Civil Procedure § 526, this Court may issue a restraining order or
22 preliminary injunction during the pendency of the proceedings. This temporary relief is warranted
23 because LandWatch is likely to prevail on the merits and because commencement of physical
24 development activities will cause great and irreparable injury.

25 **ATTORNEYS' FEES**

26 86. LandWatch is entitled to recover attorneys' fees as provided in Code of Civil Procedure
27 § 1021.5 if it prevails in this action and the Court finds that a significant benefit has been conferred on
28 the general public or a large class of persons, and that the necessity and burden of private enforcement

1 is such as to make an award of fees appropriate. LandWatch and its members have no substantial
2 financial interest in the subject matter of this action and LandWatch brings this action in the public
3 interest. Relief in this action would confer a substantial public benefit.

4 **PRAYER**

5 WHEREFORE, LandWatch prays for entry of judgment as follows:

6 1. For a peremptory writ of mandate directing MCWD:

7 (a) to set aside its February 20, 2018 action finding that the Project is not a project under
8 CEQA;

9 (b) to set aside its February 20, 2018 action finding that the Project is exempt from CEQA;

10 (c) to set aside its February 20, 2018 action adopting an Initial Study/Negative Declaration
11 for the Project;

12 (c) to set aside its February 20, 2018 action authorizing staff to submit an application for the
13 Ord Community Sphere of Influence Amendment and Annexation to the Local Agency
14 Formation Commission of Monterey County until MCWD has taken action necessary to bring its
15 approval of Project into compliance with CEQA;

16 (d) to comply with CEQA in any subsequent action or actions taken to approve the Project;

17 2. For other relief that prevents MCWD's actions, determinations, and approvals for the
18 Project from taking effect and/or that requires MCWD to rescind, modify, or invalidate its actions
19 related to the Project;

20 3. For an order granting temporary relief, including an order prohibiting MCWD from
21 proceeding with the Ord Community Sphere of Influence Amendment and Annexation, pending the
22 outcome of this proceeding;

23 4. For a preliminary and permanent injunction directing MCWD to cease and refrain from
24 engaging in any action purporting to be authorized by the Ord Community Sphere of Influence
25 Amendment and Annexation that could result in any change or alteration in the physical environment
26 until MCWD takes any necessary action to bring its action into compliance with CEQA.

27 5. For its costs of suit;

1 6. For an award of attorneys' fees, including attorneys' fees pursuant to Code of Civil
2 Procedure § 1021.5 and/or the catalyst theory; and

3 7. For other legal or equitable relief that the Court deems just and proper.
4

5 Dated: March 9, 2018

Respectfully submitted,
M. R. WOLFE AND ASSOCIATES, P.C.

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By: _____

10 Mark R. Wolfe
11 John H. Farrow
12 Attorneys for Petitioner
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VERIFICATION

I, Michael D. DeLapa, declare:

I am the Executive Director of LandWatch Monterey County, the Petitioner in the above-captioned action. I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I am signing this document at Carmel Valley, California, and affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: March 8, 2018



Michael D. DeLapa