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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO, HALL OF JUSTICE

12	FRIENDS OF THE SAN DIEGUITO RIVER	)	GENERAL CIVIL (CEQA)
13	VALLEY, a California Non-Profit Public Benefit	)	CASE NO.: 37-2016-00030312-CU-TT-CTL
14	Corporation,)	
15	Petitioner,)	
16	vs.	)	SECOND AMENDED PETITION FOR WRIT
17	CITY OF SAN DIEGO, a public entity;	)	OF MANDATE
18	and DOES 1 through 5, inclusive,	)	(CCP Sections 1085, 1094.5, and PRC Section
19	Respondent,	)	21168)
20	_____)		Judge: Hon. Gregory W. Pollack
21	SURF CUP SPORTS, LLC, a limited liability	)	Dept.: C-71
22	company and OCEAN INDUSTRIES INC, a	)	Petition Filed: August 29, 2016
23	California Corporation and DOES 6 through 10,	)	Hearing Date: August 13, 2018
24	Real Parties in Interest.	)	Hearing Time: 9:00 a.m.
25	_____)		

26 Petitioner FRIENDS OF THE SAN DIEGUITO RIVER VALLEY ("FSDRV"), hereby
27 petitions this Court for a Writ of Mandate under Sections 1094.5 and 1085 of the Code of Civil
28 Procedure and Section 21168 of the Public Resources Code, directed to Respondent CITY OF SAN
DIEGO ("City"), and by this verified Petition represents that:

1 **GENERAL ALLEGATIONS**

2 1. FSDRV is a California Non-Profit Public Benefit Corporation. Established in 1986 as a
3 non-profit, and supported by a network of members and affiliates, FSDRV promotes and supports
4 conservation, restoration, preservation and enhancement of the natural scenic, ecological and open-
5 space resources of the San Dieguito River Valley through advocacy, study, monitoring,
6 and education. The members of FSDRV reside in or visit the San Dieguito River Valley in City of
7 San Diego and County of San Diego, State of California.

8 2. FSDRV believes in preserving and ensuring a quality of life by protecting the
9 environment, through wise planning, lawful stewardship of lands, and following the policies,
10 ordinances, and laws which apply to the San Dieguito River Valley in the City of San Diego. As
11 residents, community members, and visitors to the San Dieguito River Valley, members of FSDRV are
12 directly affected by the July 25, 2016, decision of Respondent to authorize an approximate 28 year
13 Ground Lease with Surf Cup Sports, LLC (“Surf Cup”), for the 114 acres of City-owned property
14 located at 14555 El Camino Real/14955 Via de la Valle known as the “Polo Fields” (“Project”).
15 Respondent based this decision on its determination that the Project is covered by the General Rule,
16 California Environmental Quality Act (CEQA) Section 15061(b)(2) and (3), and is categorically
17 exempt from CEQA pursuant to CEQA Guidelines Sections 15323, 15301, 15304 and 15311, and that
18 an exception to the exemptions as set forth in CEQA Guidelines Section 15300.2 does not apply.

19 3. Subsequent to Respondent’s approval of the Ground Lease and categorical exemptions,
20 Surf Cup has demolished temporary corrals and tack rooms, graded the road and other areas of the site,
21 disposed of stall bedding in native habitat, increased use of the site, removed trees, installed new chain
22 link fencing, added road bed material, constructed a new entrance off Via de la Valle, constructed a
23 new arena and trenched along the access road. There is no evidence the City has required or
24 considered any permits for this work.

25 4. FSDRV and its members are directly affected by the failure of the City of San Diego to
26 require permits for the ongoing activities on the Polo Fields. As the landowner the City is the
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1 Responsible Party for the Polo Fields. The City is required to comply with the Municipal Code and is
2 responsible for any violations of the San Diego Municipal Code occurring on the Polo Fields.

3 5. FSDRV and its members have been injured as a result of Respondent's actions
4 approving the Project and failing to require or consider permits for the ongoing activities.
5 Respondent's actions adversely affect the aesthetic, environmental, health, and safety interests of
6 FSDRV's members. The interests of FSDRV's members have been and will continue to be adversely
7 affected by Respondent's unlawful actions in violation of the Fairbanks Ranch Country Club Specific
8 Plan, San Diego Municipal Code, California Environmental Quality Act ("CEQA") and the Code of
9 Civil Procedure ("CCP"). The relief sought in this Petition would redress FSDRV and FSDRV's
10 injuries.

11 6. Respondent is a local government which is a subdivision of the State of California and
12 a body corporate and politic exercising local government powers, as specified in the Constitution and
13 the laws of the State of California. At all times mentioned in this Petition, Respondent has assumed
14 the role of the governmental agency charged by law with administering the provisions of the San
15 Diego Municipal Code and the Public Resources Code Section 21000 *et seq.*

16 7. FSDRV does not know the true names or capacity of the persons or entities sued herein
17 as Does 1 through 5, and therefore sues these Respondents by fictitious names. FSDRV will amend
18 the Petition to set forth names and capacity of said Respondents along with appropriate charging
19 allegations when the same have been ascertained.

20 8. Real Party in Interest SURF CUP SPORTS, LLC ("Surf Cup") is a California limited
21 liability company. SURF CUP SPORTS, LLC is identified as the intended lessee for the Polo Fields.

22 9. At the time the Petition was filed OCEAN INDUSTRIES, INC. was the successor in
23 interest to the original developer Watt Industries of San Diego ("WISD") and had a beneficial interest
24 in the provisions of the deed granting the land to Respondent City of San Diego.

25 10. Subsequent to the filing of the Petition for Writ of Mandate; OCEAN INDUSTRIES,
26 INC. transferred its interest in the grant deed to FAIRBANKS POLO CLUB HOMES ("HOA"), a
27 California Common Interest Developer. FAIRBANKS POLO CLUB HOMES has a beneficial
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1 interest in the operation and management of the subject property and is now named as a Real Party-in-
2 Interest.

3 11. FSDRV was not and could not have been aware of the interest of FAIRBANKS POLO
4 CLUB HOMES in the subject property at the time the Petition for Writ of Mandate was filed. Now
5 that POLO CLUB HOMES true name and interest in the property has been discovered; FSDRV
6 amends the complaint to substitute FAIRBANKS POLO CLUB HOMES for DOE 6. FSDRV does
7 not know the true names or capacity of the persons or entities sued herein as Does 7 through 10, and
8 therefore sues these Real Parties in Interest by such fictitious names. FSDRV will amend the Petition
9 to set forth the names and capacity of said Real Parties in Interest along with appropriate charging
10 allegations when the same have been ascertained.

11 12 **VENUE**

13 11. Venue and jurisdiction in this Court are proper pursuant to the California Code of Civil
14 Procedure, for a matter relating to subject property located within, and discretionary, quasi-legislative
15 and administrative actions decided within, this Court's jurisdiction.

16 **PROJECT DESCRIPTION AND HISTORY**

17 12. The project site is approximately 114 acres located at 14555 El Camino Real/14955 Via
18 de la Valle on the east side of El Camino Real adjacent to the north bank of the San Dieguito River in
19 the northwestern portion of the City of San Diego. The site is within the AR-1-1, AR-1-2 and OF-1-1
20 zones and is designated Open Space in the Fairbanks Ranch Country Club Specific Plan.

21 13. The site was originally acquired by the City of San Diego through the development of
22 Fairbanks Ranch Country Club in 1983 by Watt Industries/San Diego, Inc. ("WISD"). The original
23 grant deed limited uses on the site to agricultural uses, passive non-commercial recreational uses and
24 active non-commercial uses not involving large assemblages of people or automobiles.

25 14. In 1986, the City approved a mitigated negative declaration and signed a lease with the
26 Rancho Santa Fe Polo Club that allowed the operation of a polo facility, polo matches, the boarding
27 and training of horses, a public trail and uses incidental to polo. The City allowed the Rancho Santa
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1 Fe Polo Club to host a girls soccer tourney and Senior Olympics Soccer in 1997. In 2002, the Grantee,
2 WISD, Inc. consented to allow dog shows, soccer tournaments, lacrosse tournaments, Christmas tree
3 sales, golf equipment testing, youth soccer practices and up to 6 livestock/grounds keepers living on
4 the site. WISD, Inc. limited dog shows, soccer tournaments and lacrosse tournaments to 25 days
5 (cumulative) per year. This agreement was not recorded within the chain of title for any of the other
6 lands benefited by the original grant deed.

7 15. In 2011, the City approved a Site Development Permit and mitigated negative
8 declaration for the restoration of an existing multi-use public trail, restoration of impacts to
9 environmentally sensitive lands and a separate private equine exercise track on the project site.
10 Restoration of the public trail and environmentally sensitive habitat was in response to a Notice of
11 Violation and a Civil Penalty Notice and Order issued to the Rancho Santa Fe Polo Club.

12 16. In 2015, the City's Real Estate Assets Department issued a Request for Proposals to
13 lease and operate the property. The City received three proposals and determined Real Party-In-
14 Interest Surf Cup's proposal was the only proposal responsive to the RFP.

15 17. On March 29, 2016, several truck loads of fill material were dumped and spread in the
16 north east corner of the site.

17 18. On May 23, 2016 Surf Cup or its agent used a bulldozer to grade the access road,
18 damaging the adjacent environmentally sensitive habitat.

19 19. In May 2016, unknown parties began demolishing the club house, barns, stables and
20 tack rooms.

21 20. On June 29, 2016, the City's Smart Growth and Land Use Committee considered a 28-
22 year lease of the project site to Surf Cup and recommended approval to the San Diego City Council.
23 Members of FSDRV and other members of the public provided oral and written testimony in
24 opposition to the approval of the lease.

25 20. On July 25, 2016, the City approved a 28-year lease to Surf Cup that allowed for use of
26 the property for youth sports, youth polo instruction, occasional polo matches, horse drop-off facilities
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1 for the public trail and partnering with other sports organization for sports-related special events and
2 other ancillary uses. The Lease proposal included the following components:

- 3 • Improve existing irrigation system and equipment
- 4 • Install replacement fencing and gates around the property and wayfinding signage
- 5 • Replace existing turf with new turfgrass and make improvements to existing
6 landscaping throughout the property
- 7 • Improve all existing roads and parking areas
- 8 • Remove unsafe non-native trees or foliage
- 9 • Disassemble and recycle existing barns, stables, temporary storage areas and other
10 structures
- 11 • Replace existing trailers to support existing staff
- 12 • Remove and properly dispose of and/or recycle all trash/abandoned equipment and
13 unused fixtures on site
- 14 • Remove and replace existing dilapidated clubhouse and offices
- 15 • Remove and relocate existing maintenance yard and associated structures
- 16 • Miscellaneous improvements to ensure compliance with the City's Municipal Code
- 17 • Remove the existing equestrian arena
- 18 • Install caretaker housing to support polo uses on-site
- 19 • Remove polo scoreboard and billboards

20 The City determined the Lease and associated components is exempt from the provisions of
21 CEQA. Members of FSDRV and other members of the public provided written and oral testimony to
22 the City Council prior to the close of the hearing at the City Council on July 25, 2016. The City
23 Council decided to approve the lease.

24 21. The City filed a Notice of Exemption with the County Clerk of the County of San
25 Diego on July 26, 2016.

26 22. On July 28, 2016, unknown parties began spreading gravel on the access roads at the
27 project site.

1 22. The City approved an amendment to the Resolution of Approval for the Lease on
2 August 2, 2016.

3 23. The City filed a second Notice of Exemption with the County Clerk of the County of
4 San Diego on August 4, 2016.

5 24. FSDRV is informed and believes that filing of the Notice of Exemption is the final
6 action Respondent intends to take regarding approval of the Project under CEQA and other applicable
7 laws.

8 25. At unknown times after the ground lease approval in 2016, parties have buried gasoline
9 tanks, repeatedly created and graded new parking areas, repeatedly graded and widened the access
10 road, graded new storage areas, and significantly increased the use of the project site for a variety of
11 events and practices.

12 26. In January 2017 parties began removing the polo school arena from the Polo Fields.

13 27. In April 2017 parties graded the entrance to the Polo Fields and constructed new curb,
14 gutter, sidewalk and signage.

15 28. In September 2017 parties began disposing of horse bedding material in the southwest
16 corner of the property on native vegetation.

17 29. In January 2018, parties installed lights for use at night.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
19 **AND INADEQUATE REMEDIES AT LAW**

20 30. FSDRV has exhausted all available administrative remedies, and objections to the
21 Project have been presented orally and in writing to Respondent.

22 31. FSDRV has complied with the requirements of Public Resources Code Section 21167.5
23 by mailing a written notice of commencement of this action to Respondent. A true and correct copy of
24 that notice is attached hereto as Exhibit 1.

25 32. FSDRV has no adequate remedy at law unless this Court grants the requested writ of
26 mandate requiring Respondent to set aside its approval of the Project and set aside its determination
27 the Project is exempt from CEQA; and prepare an environmental impact report (“EIR”) addressing all
28 issues set forth in this petition. In the absence of such remedy, Respondent’s approval will remain in

1 effect in violation of State law, and FSDRV will suffer irreparable harm because violations of
2 applicable land use laws and regulations and significant adverse environmental impacts generated by
3 the Project that will have not been properly analyzed under CEQA.

4 33. FSDRV has performed all conditions precedent to filing this action by complying with
5 all requirements and has no other remedy than to bring this action. All other requests of Respondent,
6 having been previously made, would be futile.

7 **FIRST CAUSE OF ACTION**
8 **(CEQA)**

9 34. Petitioner incorporates by reference each of the allegations set forth in this Petition as if
10 set forth herein in full.

11 35. City has committed to a definite course of action regarding the proposed Project and
12 has failed to consider the environmental consequences of this action.

13 36. The City inappropriately segmented the project to avoid consideration of the
14 cumulative impact of all components of the lease described above.

15 37. The City then failed to consider the environmental consequences of the Project at the
16 Project's formative stages thus allowing for undue project momentum and post-hoc rationalizations.

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18 **SECOND CAUSE OF ACTION**
19 **(CEQA)**

20 38. Petitioner incorporates by reference each of the allegations set forth in this Petition as if
21 set forth herein in full.

22 39. The notice of exemption fails to include a statement of reasons to support the City's
23 finding that the project is exempt. Although the Notice of Exemption does include citations to
24 exemptions there is no explanation of why those exemptions apply to the Project.

25 **THIRD CAUSE OF ACTION**
26 **(CEQA)**

27 40. Petitioner incorporates by reference each of the allegations set forth in this Petition as if
28 set forth herein in full.

41. The Project is not categorically exempt from CEQA review.

1 42. There is substantial evidence to support a fair argument the Project may have a
2 significant impact on biology, traffic, noise and water quality.

3 43. There is a reasonable possibility that the Project may have a significant effect on the
4 environment due to unusual circumstances. The Project site is located next to and includes habitat
5 supporting threatened and endangered species. CEQA does not support a categorical exemption for a
6 Project located in proximity to environmentally sensitive habitat.

7 **FOURTH CAUSE OF ACTION**
8 **(CEQA)**

9 44. Petitioner incorporates by reference each of the allegations set forth in this Petition as if
10 set forth herein in full.

11 45. The categorical exemptions relied upon by the City do not apply to the Project.

12 46. The Project does not meet the criteria of CEQA Guidelines section 15323 because Project
13 substantially changes the historical use on the project site and Surf Cup proposes extensive changes to
14 the facility as cited above.

15 47. The Project does not meet the criteria of CEQA Guidelines section 15301 because Surf
16 Cup proposes to significantly increase the intensity of use on the project site and Surf Cup's use of the
17 property has never undergone environmental review.

18 48. The Project does not meet the criteria of CEQA Guidelines section 15304 because the
19 Project proposes significant grading in and adjacent to environmentally sensitive habitat.

20 49. The Project does not meet the criteria of CEQA Guidelines section 15311 because the
21 components of the lease include the removal and/or replacement of every structure on the site and the
22 placement of new structures with no information regarding the size, location and design of these new
23 structures. The Project does not contemplate minor accessory structures; the Project allows significant
24 new structures that have never been reviewed under CEQA.

25 **FIFTH CAUSE OF ACTION**
26 **(CCP 1085)**

27 50. Petitioner incorporates by reference each of the allegations set forth in this Petition as if
28 set forth herein in full.

1 51. The City is the landowner and lessor of the project site and Surf Cup is the tenant and
2 lessee of the City. The City meets the definition of a responsible person under San Diego Municipal
3 Code section 11.0210 and is responsible for any violations of the municipal code occurring on its
4 property.

5 52. Surf Cup privately operates an outdoor recreation facility over 40,000 square feet in size
6 on the project site.

7 53. The project site is zoned AR 1-1, A-R 1-2 and OF 1-1 by the City of San Diego.

8 54. San Diego Municipal Code section 131.0322 requires a conditional use permit for a
9 privately operated, outdoor recreation facility over 40,000 square feet in size in the AR 1-1 and AR 1-2
10 zones.

11 55. The City and/or Surf Cup did not obtain a conditional use permit to operate an outdoor
12 recreation facility over 40,000 square feet in size.

13 56. It is unlawful for any person to maintain or use any premises without a required permit
14 under the Land Development Code. San Diego Municipal code section 131.0302.

15 57. As a responsible party, the City has chosen to maintain a privately operated, outdoor
16 recreation facility over 40,000 square feet in size in the AR1-1 and AR1-2 zones without the required
17 conditional use permit. The City has a clear, present and ministerial duty to obtain a conditional use
18 permit or cause its tenant to obtain a conditional use permit for the privately operated, outdoor recreation
19 facility over 40,000 square feet that is presently operating on its property. In the alternative, the City
20 and Surf Cup must discontinue the use.

21 58. San Diego Municipal Code section 131.0222 does not allow a privately operated, outdoor
22 recreation facility over 40,000 square feet in size in the OF 1-1 zone.

23 59. Surf Cup Sports, Inc's use of the portion of the project site in the OF1-1 zone for a
24 privately operated, outdoor recreation facility over 40,000 square feet in size is prohibited under San
25 Diego Municipal Code section 131.0222.

26 60. Under San Diego Municipal code section 121.0302(a), it is unlawful for any person to
27 maintain or use any premises in violation of any provisions of the Land Development Code. As the
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1 responsible party, it is unlawful for the City to maintain a privately operated, outdoor recreation facility
2 over 40,000 square feet on the portion of the site zoned OF 1-1.

3 61. San Diego Municipal Code section 129.0602 requires a grading permit for any grading
4 within City-owned open space. The project site is City-owned open space.

5 62. San Diego Municipal Code section 113.0103 defines grading as any earthwork that
6 involves grubbing, excavating, embanking, or filling. Grubbing means the removal or destruction of
7 vegetation by disturbance to the root system or soil surface by mechanical, chemical, or other means.

8 63. Surf Cup or its agents have graded significant portions of the project site, which is City-
9 owned open space, for the expansion of roads and the creation of parking areas. Surf Cup has also
10 brought material to cover the roads and parking areas, constituting fill under the definitions of the
11 municipal code.

12 64. Neither Surf Cup or the City procured a grading permit for the grading performed on the
13 project site.

14 65. Under San Diego Municipal code section 121.0302(a), it is unlawful for any person to
15 maintain or use any premises in violation of any provisions of the Land Development Code without the
16 required permit. Under San Diego Municipal Code section 121.0302(b)(2) it is unlawful for any person
17 to grade, excavate, clear, fill, grub, build an embankment, construct slopes, or disturb sensitive natural
18 or biological resources on any lot or premises contrary to the provisions of the municipal code.

19 66. As a responsible party, the City has used the project site in violation of the grading
20 provisions of the Land Development Code by performing grading without the required grading permit.
21 The City has a clear, present and ministerial duty to obtain a grading permit or cause its tenant to obtain
22 a grading permit for the grading performed on its property. In the alternative, the City and Surf Cup
23 must restore the project site to its condition prior to the illegal grading.

24 67. Under San Diego Municipal code section 121.0312(b), the City Manager shall order the
25 restoration of *grading* undertaken without a permit, unless technically infeasible. The restoration shall
26 be conducted in accordance with Section 142.0150. No further permits for the premises shall be
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1 processed until the restoration has been completed and specified performance criteria have been met as
2 required by the City.

3 68. The City abuses its discretion by not restoring or requiring Surf Cup to restore the project
4 site to its condition prior to the illegal grading.

5 69. The City has abused its discretion by unlawfully maintaining a property without the
6 permits required by the San Diego Municipal Code.

7 70. Paragraph 10.11 of the Percentage Ground Lease between City and Surf Cup requires
8 that Surf Cup shall implement and comply with the applicable "Minimum Industrial and Commercial
9 BMP's" adopted under San Diego Municipal Code section 43.0307(a).

10 71. The Percentage Ground Lease was approved by a resolution of the City Council. It is the
11 legal duty of the City to implement all resolutions passed by the City Council. The City's function is
12 now purely ministerial to require that Surf Cup implement and comply with the applicable BMPs
13 required by the San Diego Municipal Code.

14 72. Surf Cup has failed to implement and comply with the applicable BMPs required by the
15 San Diego Municipal Code and the City has failed to implement the requirements of the Percentage
16 Lease and hence the resolution adopted by the City Council. This failure to perform a ministerial duty
17 is an abuse of discretion.

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20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner respectfully prays:

22 1. That this Court finds that, by approving the Project, Respondent has not proceeded in a
23 manner required by law and/or its decision is not supported by substantial evidence;

24 2. That this Court order Respondent to vacate and set aside its decision made on or about
25 July 25, 2016 and that this Court issue a peremptory writ of mandate ordering Respondent to set aside
26 its decision approve the lease for the Project;

1 3. That this Court order Respondent to enforce its ordinances by requiring a Conditional
2 Use Permit, Grading Permit and required BMPs for the Project.

3 4. That this Court order Respondent to enforce its ordinances by disallowing any portion
4 of the Project to encroach into the OF 1-1 Zone.

5 5. That this Court issue a peremptory writ of mandate declaring that one or more of the
6 decision(s) rendered by Respondent on or about July 25, 2016, and any additional discretionary or
7 ministerial approvals by Respondent relating to, or dependent upon, the same are null and void and of
8 no force or effect;

9 6. That Respondent refrain from granting any additional permits, entitlements, or other
10 approvals related to the Project until it has taken action necessary to bring such approvals into
11 compliance with the San Diego Municipal Code, CEQA, and any other applicable local ordinances,
12 rules, and policies;

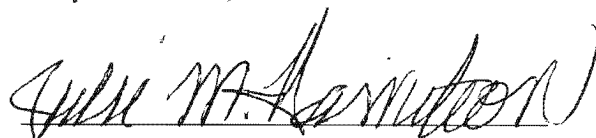
13 7. That Petitioner be awarded its reasonable costs incurred in this action;

14 8. That Petitioner be awarded reasonable attorney's fees pursuant to Cal. Code of Civil
15 Procedure Section 1021.5; and

16 9. For such other legal or equitable relief that the Court deems just and proper.

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18 Dated: May 10, 2018

Respectfully Submitted,

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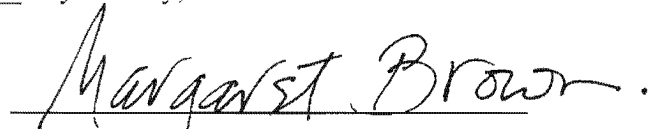
21 Julie M. Hamilton
22 Attorney for Petitioner
23 Friends of the San Dieguito River Valley
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VERIFICATION

I, Margaret Brown declare:

I am President of the FRIENDS OF THE SAN DIEGUITO RIVER VALLEY, petitioner in this action. I have read the above Second Amended Petition for Writ of Mandate and know its contents. All the facts alleged in the Petition not otherwise by citation to the record, exhibits, or other documents are true of my own personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Diego, California, this 11 day of May, 2018.



Margaret Brown
Friends of the San Dieguito River Valley