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12 WATER DISTRICT

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF RIVERSIDE

15 MISSION SPRINGS WATER DISTRICT,
16 a California county water district,

17 Petitioner and Plaintiff,

18 v.

19 DESERT WATER AGENCY, a California
20 public agency; COACHELLA VALLEY
21 WATER DISTRICT, a California county
22 water district; CALIFORNIA
23 DEPARTMENT OF WATER
24 RESOURCES, an agency of the State of
25 California; and DOES 1 through 50,

26 Respondents and Defendants.

27 THE CITY OF INDIO WATER
28 AUTHORITY, a California joint powers
authority and public agency; THE CITY OF
COACHELLA WATER AUTHORITY, a
California joint powers authority and public
agency; and DOES 51 through 100,

Real Parties in Interest.

CASE NO.: PSC 1600676
Case Assigned For All Purposes to Dept. PS2,
The Hon. Judge David M. Chapman

**THIRD AMENDED PETITION FOR WRITS
OF MANDATE AND/OR
ADMINISTRATIVE MANDAMUS;
COMPLAINT FOR BREACH OF
CONTRACT (SPECIFIC PERFORMANCE)
AND BREACH OF COVENANTS OF GOOD
FAITH AND FAIR DEALING; AND
DECLARATORY RELIEF AND
INJUNCTIVE RELIEF**

**DEEMED VERIFIED PURSUANT TO
CCP § 446**

Petition Filed: February 16, 2016
Trial Date: Not Set

JURY TRIAL DEMANDED

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1 Petitioner and Plaintiff, Mission Springs Water District (“Mission Springs”), by and
2 through this Third Amended Petition for Writs of Mandate and/or Administrative Mandamus and
3 Complaint for Breach of Contract (Specific Performance), Breach of Covenants of Good Faith
4 and Fair Dealing, Declaratory Relief and Injunctive Relief (hereinafter “Petition” and/or “Petition
5 and Complaint”), alleges as follows:

6 **INTRODUCTION**

7 1. This action arises primarily out of the Sustainable Groundwater Management Act
8 (“SGMA”), and/or actions taken by Defendants/Respondents pursuant to SGMA. Specifically,
9 this action arises out of Desert Water Agency’s (“DWA”) actions taken in total disregard of a
10 pre-existing 2004 Settlement Agreement wherein it, along with the Coachella Valley Water
11 District (“CVWD”), promised to share with Mission Springs groundwater management
12 responsibility over the sub-basins of the Coachella Valley Groundwater Basin (“Coachella Valley
13 Basin” or “Basin”), and to instead become the exclusive Groundwater Sustainability Agency
14 (“GSA”) over a substantial portion of the Mission Springs’ jurisdictional water service area.

15 2. This exercise of discretion enables DWA to assert exclusive authority to manage
16 all groundwater within Mission Spring’s water service area, as well as to exert extra-jurisdictional
17 control over an approximately three square mile, diving board shaped area (the “three square mile
18 area”), that lies exclusively within Mission Springs’ jurisdictional boundaries and in which DWA
19 owns no groundwater extraction or distribution facilities. Such unilateral election in violation of
20 the 2004 Settlement Agreement has prohibited Mission Springs from being designated the
21 exclusive GSA under SGMA.

22 3. The Department of Water Resources (“DWR”) thereafter improperly accepted
23 DWA’s Notice of Election as complete, determined DWA’s status as exclusive GSA over
24 substantially all of Mission Springs’ boundaries, and posted “overlap” status of Mission Springs
25 and DWA in the three square mile area, thereby thwarting Mission Springs’ designation as the
26 GSA within that area.

27 4. Further, following DWR’s determination that DWA was the exclusive GSA over
28 Mission Springs’ boundaries, and rejection of Mission Springs’ Notice of Election, DWA and

1 CVWD then used Mission Springs' lack of GSA status to purposefully exclude Mission Springs
2 from participation in a MOU for the Indio Sub-Basin. DWA and CVWD also excluded Mission
3 Springs from the process of formulating a fair and equitable memorandum of understanding for
4 governance of the Mission Creek Sub-Basin, in direct violation of the 2004 Settlement
5 Agreement that requires cooperative management of the same.

6 **THE PARTIES**

7 5. Mission Springs Water District (referred to herein as "Mission Springs" and/or
8 "District"), is a California county water district existing and operating pursuant to the provisions
9 of Division 12 of the California Water Code, commencing at § 30000, *et seq.* ("County Water
10 District Law"), with its principal place of business located in the City of Desert Hot Springs
11 ("Desert Hot Springs"), County of Riverside ("County"), State of California ("State" or
12 "California").

13 6. Mission Springs is informed and believes, and thereon alleges, that respondent and
14 defendant DWA is a California public agency, organized and existing under California law,
15 including the Desert Water Agency Law, Water Code Appendix Chapter 100, commencing with
16 Section 100-1 ("DWA Law"), with its principal place of business in the City of Palm Springs
17 ("Palm Springs"), County of Riverside, California.

18 7. Mission Springs is informed and believes, and thereon alleges, that respondent and
19 defendant CVWD was formed in 1918, and is a California county water district and public
20 agency of the State, organized and existing under the County Water District Law, with its
21 principal place of business in the City of Coachella ("Coachella"), California.

22 8. Mission Springs is informed and believes, and thereon alleges, that respondent and
23 defendant, the California Department of Water Resources ("DWR") is a department and agency
24 created under the laws and regulations of the State of California. DWR is, among other things,
25 charged with administration and implementation of SGMA. DWA, CVWD, and DWR may be
26 referred to collectively herein as "Defendants/Respondents."

27 9. Mission Springs is informed and believes, and thereon alleges, that real party in
28 interest, the City of Indio Water Authority, a California joint powers authority formed pursuant to

1 the Joint Exercise of Powers Act, California Government Code, sections 6500 *et seq.*, and public
2 agency of the State, formed as a component of the City of Indio and the Housing Authority for the
3 City of Indio, with its principal place of business in the City of Indio, County of Riverside,
4 California, and is a signatory to the Indio Sub-Basin MOU and Alternative Plan. The City of
5 Indio Water Authority is referred to herein as the “Indio Water Authority.”

6 10. Mission Springs is informed and believes, and thereon alleges, that real party in
7 interest, the City of Coachella Water Authority, a California joint powers authority formed
8 pursuant to the Joint Exercise of Powers Act, California Government Code, sections 6500 *et seq.*,
9 and public agency of the State, formed as a component of the City of Coachella and the Housing
10 Authority of the City of Coachella, and is a signatory to the Indio Sub-Basin MOU and
11 Alternative Plan. The City of Coachella Water Authority is referred to herein as the “Coachella
12 Water Authority.”

13 11. Mission Springs is ignorant of the true names and capacities, whether individual,
14 corporate, or otherwise of the respondents and defendants, and/or real parties in interest, named
15 herein as Does 1 through 100, inclusive, and Mission Springs therefore sues these respondents,
16 defendants and/or real parties in interest by such fictitious names. Mission Springs will further
17 amend this Petition and Complaint to state the true names and capacities of each such fictitiously
18 named respondent, defendant and/or real party in interest when such names and capacities are
19 ascertained.

20 12. Mission Springs is informed and believes and on that basis alleges that at all times
21 material hereto, respondents, defendants and/or real parties in interest designated as Does 1
22 through 100, inclusive, were and now are the agents and/or principals of the other respondents
23 defendants, and/or real parties in interest, and each of them, and in such capacity or capacities,
24 participated in the acts and conduct alleged herein, or claim some right, title or interest in
25 managing groundwater in the Indio (Whitewater River) Sub-Basin (the “Indio Sub-Basin”), the
26 Mission Creek Sub-Basin, the San Gorgonio Pass Sub-Basin, and/or the Garnet Hill Sub-Basin
27 within Mission Springs’ Service Area, and/or the water contained therein, and that each such
28 claim is adverse to Mission Springs’ rights, authorities, and claims asserted herein.

1 26. Mission Springs has continuously and without interruption produced percolating
2 groundwater from these Sub-Basins and dedicated this supply to public use for the principally
3 domestic uses under reasonable and efficient means. (*See*, Water Code § 106; California
4 Constitution Art. X, § 5.)

5 27. Mission Springs has the fundamental statutory authority, duty and right to manage
6 groundwater within its jurisdictional Service Area boundary. (*See* Water Code §§ 31020-31026.)
7 Pursuant to its powers expressly delineated in the California Water Code, Mission Springs has
8 actively managed the groundwater on which its water service responsibilities rely, since the time
9 it was formed.

10 28. Mission Springs' proprietary water rights and its groundwater management
11 activities to preserve and protect available groundwater resources previously dedicated to a public
12 use continue today and are critical to meet the existing and future needs of Mission Springs'
13 Service Area. Mission Springs' prudent management activities also ensure the ability of the
14 disadvantaged community Mission Springs serves to control its own destiny and grow to meet
15 housing and commercial needs.

16 29. Under the County Water District Law, Mission Springs is authorized to
17 commence, maintain, intervene in, defend and compromise actions and proceedings to prevent
18 interference with or diminution of any subterranean supply of waters used or useful for any
19 purpose for the District or a common benefit to the lands within the District or its inhabitants, and
20 to commence, maintain and defend actions and proceedings to prevent any such interference with
21 the aforesaid waters as may endanger the inhabitants or lands of the District.

22 30. Mission Springs has acquired appropriative and prescriptive water rights and
23 SGMA must assure the recognition and protection of these rights against loss or diminishment.
24 (*See* Water Code §§ 10720.5, 10726.8; Civil Code § 1007.)

25 31. Mission Springs is legally entitled to continue water service at the present levels
26 within its Service Area boundaries and SGMA must be construed in a manner that preserves and
27 protects these interests. (Water Code § 10720.5(b).) These water rights are recognized under State
28

1 be formed by special legislation, for the purpose of bringing State Water to the Mission Creek
2 Sub-Basin, for the benefit of Mission Springs and CVWD. The special legislation forming DWA
3 was supported by Mission Springs and CVWD.

4 36. Based on the 1960 study, in 1961, DWA was formed by special act of the
5 legislature as an agency statutorily charged with the duty of contracting for and importing State
6 Water into the Coachella Valley. By this legislation, DWA was authorized to annually determine
7 the costs of replenishing groundwater supplies within its boundaries, and then charge an
8 assessment on benefitted water producers. In order to do so, DWA exercises its authority through
9 its five-member board of directors elected by the voters within its boundaries (“DWA Board”).

10 37. In addition to its above-described replenishment functions, since approximately
11 1967 DWA has also supplied retail public water to its customers within an approximately 60
12 square mile area, predominantly located in Palm Springs and a small area of Cathedral City. (A
13 true and correct copy of the DWA Retail Boundary Map, taken from DWA’s website, is attached
14 hereto as **Exhibit “C”** and incorporated herein by this reference.) Mission Springs is informed
15 and believes that DWA does not produce or provide any retail water service within the Mission
16 Springs’ Service Area.

17 **Annexation by DWA for Imported Water**

18 38. Soon after DWA was formed in 1961, and as contemplated by the 1960 study and
19 DWA’s implementing legislation, Mission Springs and DWA agreed that for their mutual benefit
20 and without waiving or limiting Mission Springs’ rights, powers and duties, that because DWA
21 had a stronger *ad valorem* tax base, it could better qualify to execute a contract for State Water
22 for replenishment of the Mission Creek and Indio Sub-Basins.

23 39. Thus, in or about 1962 and 1963, solely for the limited purpose of obtaining the
24 advantage of DWA’s superior financial position in obtaining contracts for importing State Water
25 into the Coachella Valley Basin on which the District relied for its water service, and with no
26 abdication of statutory rights, the Mission Springs Board consented to annexation to DWA.

27 40. Water Code section 30065 provides in part that “[n]o public corporation or public
28 agency having identity of purpose or substantial identity of purpose shall be formed partly or

1 entirely within a county water district existing under the provisions of this code without the
2 consent of such county water district.”

3 41. Since its formation in 1961, the DWA Law has specifically prohibited DWA from
4 destroying the identity or legal existence or impairing the powers of any public agency which is
5 included in or annexed to DWA, notwithstanding the identity of purpose, or substantial identity of
6 purpose of DWA. (DWA Law, Section 100-49.)

7 42. Reflecting the limited scope of the annexation and by way of example, at or
8 around the time of the annexation, the DWA Law also specifically prohibited, and continues to
9 prohibit, the exercise of the power of eminent domain as to any property or facilities belonging to
10 a county water district with more than 50,000 acres of land within its boundaries, which by
11 definition included, and continues to include, Mission Springs. (See, DWA Law, Section 100-
12 15.9.)

13 43. Further, California common law and service duplication laws generally prevent
14 two public agencies from having overlapping service areas with the same duties. Thus, Mission
15 Springs reserved to itself all of its retail service and groundwater stewardship responsibilities and
16 pursued and consented to the annexation to DWA for the sole purpose of receiving wholesale
17 water service from DWA.

18 44. Moreover, the expansion of DWA’s institutional boundary in 1962 and 1963 – and
19 as defined in the DWA Law – never included the power or authority to overlap, duplicate or
20 interfere with Mission Springs’ exclusive Service Area or its duty to provide water service to its
21 inhabitants; to infringe on Mission Springs’ exclusive right to manage, control or affect
22 groundwater; to interfere with Mission Springs’ water rights; or to provide water service to
23 customers within Mission Springs’ jurisdictional boundaries.

24 45. Mission Springs did not and has never expressly or implicitly consented to DWA’s
25 exercise of overlapping authority to provide retail water or wastewater service, or any related
26 groundwater management within Mission Springs’ Service Area. For more than half a century,
27 DWA has recognized the exclusivity of Mission Springs’ water service authority and jurisdiction,
28

1 and its authority and statutory role in groundwater management in the sub-basins underlying the
2 District.

3 46. In accordance with the limited annexation, Mission Springs did not transfer or
4 abdicate its statutory powers over groundwater, groundwater management or water and
5 wastewater service within Mission Springs' Service Area. Instead, the mutual understanding of
6 DWA and Mission Springs of the limited scope of the annexation was clear by their actions, and
7 for more than 50 years had been recognized by DWA and Mission Springs in their business
8 dealings and political relationships.

9 47. For example, subsequent to the expansion of DWA's institutional boundary,
10 Mission Springs continued to provide and substantially expanded its public water service and
11 initiated wastewater service within its boundaries, incurred debt thereon, and conservatively
12 monitored and managed the groundwater on which its public service relied, all without objection
13 by DWA.

14 48. Further exemplifying the separateness of the two entities and their respective
15 jurisdiction, in or around 1967, DWA acquired two mutual water companies and, pursuant to new
16 and expanded powers under the DWA Law, initiated its own retail public water service outside
17 the Mission Springs' Service Area, but within the DWA statutory boundaries, in the City of Palm
18 Springs and a small area of Cathedral City.

19 49. Similarly, pursuant to the statutory and judicial law of this state, DWA remains
20 precluded from exercising any authority that overlaps or competes with Mission Springs' water
21 rights and exclusive jurisdictional powers, other than in connection with the importation of State
22 Water and related groundwater replenishment activities.

23 50. Significantly, since 1953, Mission Springs and its predecessor have provided
24 public water service within Mission Springs' Service Area, relying on, protecting and managing
25 the groundwater upon which that service relies. Mission Springs has never authorized DWA to
26 provide water service or any related service within its Service Area, nor has DWA historically
27 ever successfully attempted to interfere with or exercise overlapping jurisdiction within Mission
28 Springs' Service Area.

1 decades after the annexation, construction of a turnout from the Colorado River Aqueduct
2 commenced. In or about 2002, the Mission Creek spreading basins were completed so that
3 replenishment of the Mission Creek Sub-Basin could commence.

4 55. However, despite Mission Springs' Service Area overlying the Mission Creek
5 Sub-Basin and substantial reliance on the groundwater therefrom, in April 2003, CVWD and
6 DWA executed a Mission Creek Groundwater Replenishment Agreement ("Replenishment
7 Agreement"), independent of Mission Springs, which allowed for storage of advance deliveries of
8 State Water from Metropolitan Water District ("MWD"). In a May 2003 White Paper, Mission
9 Springs outlined its concerns with the Replenishment Agreement, underscoring its dependence on
10 and interest in the Mission Creek Sub-Basin. (A true and correct copy of the 2003 White Paper is
11 attached hereto as Exhibit "E" and incorporated herein by this reference.)

12 56. In October 2003, Mission Springs filed a lawsuit against DWA and CVWD
13 seeking a writ of mandate, declaratory relief for prescriptive and appropriative water rights and
14 declaratory and injunctive relief for a physical solution (adjudication) of the Mission Creek Sub-
15 Basin questioning, among other things, the quality of DWA's imported replenishment water.

16 57. In December 2004, Mission Springs, DWA and CVWD entered into a written
17 Settlement Agreement ("2004 Settlement Agreement" or the "Agreement") which provided, in
18 pertinent part, that the three agencies would work jointly to manage the Mission Creek Sub-
19 Basin, the Indio Sub-Basin, and the Garnet Hill Sub-Basin of the Upper Coachella Valley Basin.
20 The settlement provided that, *inter alia*:

21
22 4. (a) The Parties hereby create the Mission Creek Subbasin Management
23 Committee ("Management Committee"). The Management Committee shall be composed
of three (3) members, ("Representatives"), one for each Party to this Agreement.

24 ...
25 (c) The Representatives shall meet quarterly beginning in 2005 and
26 shall continue to meet each quarter thereafter. Unless the Parties agree to the contrary the
27 meeting shall be held at 10:00 a.m. at the offices of CVWD. In addition to the foregoing,
any Party may call a meeting of the Representatives with ten (10) business days' written
28 notice, which notice shall include the time and location of the meeting and the business to
be discussed.

1 The purpose of the Management Committee is to exchange information, express
2 ideas and otherwise discuss in a free, comprehensive, and frank manner any and all
3 aspects regarding the management of water resources within the Mission Creek Subbasin,
4 the Whitewater River [Indio] Subbasin, and the Garnet Hill Subbasin of the Upper
Coachella Valley Groundwater Basin (collectively "Subbasins").

5 Discussions at the quarterly meeting shall include, without limitation, costs
6 proposed to be included within replenishment assessments, quantities and timing of water
7 to be recharged into the Subbasins, water quality and other water resource issues within
8 the Subbasins, including conservation activities and recycled water issues. *All Parties
agree to act reasonably and covenant that the transactions and determinations with
respect to the Subbasins shall be made in good faith and in the spirit of cooperation.*

9 (d) Notwithstanding the forgoing, each party expressly reserves to itself, final
10 and absolute discretion to approve or disapprove, prior to commitment, any and all
11 commitments, expenditures or obligations (financial or otherwise) *with respect to the
Subbasins* or the subject matter brought before the Management Committee. Such
12 reservation of rights shall not be construed to diminish the legal authority of any party to
this Agreement or any recourse which one party may have against any other party.
[Emphasis added.]

13 (A true and correct copy of the 2004 Settlement Agreement is attached hereto as **Exhibit**
14 **"F"** and incorporated herein by this reference). The 2004 Settlement Agreement also provided,
15 among other things, for dismissal of the lawsuit, without prejudice.

16 58. In approving the 2004 Settlement Agreement, Mission Springs relied on the
17 representations set forth therein, including, but not limited to, the terms under which Mission
18 Springs was assured the right to jointly and collaboratively manage the Indio and Mission Creek
19 Sub-Basins' groundwater and water resources; that DWA and CVWD would "act reasonably and
20 covenant that the transactions and determinations with respect to the Sub-Basins shall be made in
21 good faith and in the spirit of cooperation," and that it would retain final and absolute discretion
22 to approve or disapprove, prior to commitment, any and all commitments, expenditures or
23 obligations (financial or otherwise) with respect to the Sub-Basins. (2004 Settlement Agreement,
24 **Exhibit "F"** hereto, at sections 4(c), (d).) These assurances were material to the 2004 Settlement
25 Agreement, and were relied upon in good faith by Mission Springs.

26 59. However, Mission Springs' requests for information regarding meetings and
27 attempts to participate in the groundwater planning efforts for the Indio Sub-Basin were largely
28 ignored by DWA and CVWD. By way of example, DWA and CVWD persistently and

1 deliberately either failed to call and/or excluded Mission Springs from quarterly or other
2 management committee meetings and discussions regarding the preparation and implementation
3 of the Coachella Valley Water Management Plan and Plan Update, and the Indio Sub-Basin
4 Alternative Plan, discussed more fully below. Moreover, despite requests from Mission Springs
5 representatives to work cooperatively in good faith to collaboratively address any groundwater
6 management issues arising out of SGMA, DWA and CVWD refused to meet with Mission
7 Springs.

8 60. DWA's and CVWD's actions in connection with groundwater management
9 planning in the Indio Sub-Basin directly contravene the express terms of the 2004 Settlement
10 Agreement, and also evidence conscious and deliberate actions that unfairly frustrate the agreed
11 common purpose of the 2004 Settlement Agreement, and disappoint and frustrate the benefits
12 Mission Springs was entitled to receive under the Agreement.

13 **The Integrated Regional Water Management Plan and the Basin Management Plan**

14 61. In accordance with the terms of the 2004 Settlement Agreement, Mission Springs,
15 DWA, and CVWD shared costs for basin studies and cooperated in development of the Integrated
16 Regional Water Management Plan ("IRWMP"), which included provisions regarding payment of
17 DWA's replenishment assessments, and jointly prepared a basin water management plan for the
18 Mission Creek and Garnet Hill Sub-Basins ("Basin Management Plan"). The objective of the
19 groundwater modeling effort and preparation and adoption of the IRWMP and Basin
20 Management Plan was to support groundwater management decisions on a regional basis.

21 62. In October 2008, and also in accordance with the terms of the 2004 Settlement
22 Agreement, final contracts for development of the Basin Management Plan were approved by
23 CVWD and Mission Springs, and in November 2010, DWA approved a modified proposal to
24 facilitate preparation of the Basin Management Plan. Groundwater modeling for the Mission
25 Creek and Garnet Hill Sub-Basins and the Basin Management Plan, an integral part of the
26 IRWMP, was completed by Mission Springs, DWA, and CVWD in 2013.

27 63. In February 2014, the Coachella Valley IRWMP was approved by the parties,
28 which included Mission Springs, DWA, and CVWD. The IRWMP is aimed at securing long-term

1 water supply reliability within the Coachella Valley Basin, by recognizing interconnectivity of
2 water supplies within the Coachella Valley Basin and its Sub-Basins, and providing for
3 cooperative development and implementation of projects aimed at yielding combined benefits for
4 water supply and quality, and natural resources. The IRWMP recognizes that Mission Springs,
5 DWA, and CVWD are all water management stakeholders of the Coachella Valley Basin, and the
6 parties' joint participation in the IRWMP was consistent with the terms of, and Mission Springs'
7 expectations arising from, the 2004 Settlement Agreement. The IRWMP covers the Indio,
8 Mission Creek, Desert Hot Springs and West Salton Sea Sub-Basins.

9 64. Again, and in furtherance of regional collaboration and joint management of
10 groundwater as contemplated by the 2004 Settlement Agreement, in August 2014, CVWD,
11 DWA, Mission Springs, the Coachella Water Authority, the Indio Water Authority, and Valley
12 Sanitary District entered into a Memorandum of Understanding ("IRWMP MOU") for
13 development and implementation of the IRWMP for the purpose of jointly coordinating water
14 resources planning activities undertaken by the local water agencies, and to implement projects,
15 activities and programs individually or jointly in groups that address issues related to water
16 supply reliability and/or water quality and near-term and long-term water supply planning
17 activities. (A true and correct copy of the IRWMP MOU is attached hereto as **Exhibit "G"** and
18 incorporated herein by this reference.)

19 The Sustainable Groundwater Management Act

20 **The Exclusive Groundwater Sustainability Agencies Under SGMA**

21 65. Until recently, California was the only state in the western United States – and one
22 of only two (2) states nationally – that did not regulate groundwater rights. On or about
23 September 16, 2014, almost ten (10) years after the parties entered into the 2004 Settlement
24 Agreement, Governor Brown signed a package of three bills – Senate Bill 1168, Senate Bill 1319,
25 and Assembly Bill 1739 – collectively known as SGMA.

26 66. In enacting SGMA, the Legislature established a statutory scheme aimed at
27 achieving the sustainable management of the state's groundwater resources at the local level.
28 Section 113, added to the Water Code pursuant to SGMA, summarizes its intent, stating:

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It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on the best available science.

67. California’s 431 groundwater basins are designated as either high-, medium-, low- or very low-priority basins. In order to accomplish statewide sustainable groundwater management, SGMA mandates the establishment of GSAs at the local level in all high- and medium-priority basins, and encourages the formation of GSAs in all low- or very-low priority basins. The basins at issue in this Petition are medium-priority basins, and SGMA therefore mandates the establishment of a GSA or GSAs for these basins. GSAs are tasked with creating and submitting Groundwater Sustainability Plans (“GSPs”) or alternate plans by which groundwater will be sustainably managed in the time periods established by statute.

68. SGMA contemplates that statewide sustainable groundwater management will take place at the local level, with the State intervening only in those instances specified, including where a GSA has failed to fulfill its duties.

69. SGMA grants significant powers and authorities to agencies electing to become GSAs. Such powers and authorities place GSAs in a position to allow, control, or limit growth. GSAs are empowered and authorized, without limitation:

(1) To impose spacing requirements on new groundwater well construction to minimize well interference and impose reasonable operating regulations on existing groundwater wells to minimize well interference, including requiring extractors to operate on a rotation basis.

(2) To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations. Those actions shall be consistent with the applicable elements of the city or county general plan, unless there is insufficient sustainable yield in the basin to serve a land use designated in the city or county general plan. A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.

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(3) To authorize temporary and permanent transfers of groundwater extraction allocations within the agency’s boundaries, if the total quantity of groundwater extracted in any water year is consistent with the provisions of the groundwater sustainability plan. The transfer is subject to applicable city and county ordinances.

(4) To establish accounting rules to allow unused groundwater extraction allocations issued by the agency to be carried over from one year to another and voluntarily transferred, if the total quantity of groundwater extracted in any five-year period is consistent with the provisions of the groundwater sustainability plan.

(See, Water Code section 10726.4(a)).

70. While generally allowing “any local agency” as defined in Water Code section 10721(m), or any combination thereof, to elect to become a GSA for a basin it overlies, SGMA nevertheless designates fifteen (15) “agencies created by statute to manage groundwater” as “the exclusive local agencies within their respective statutory boundaries with powers to comply” with SGMA. (See Water Code section 10723).

71. Despite not being an agency created by statute to manage groundwater, DWA was designated in SGMA among the aforementioned fifteen “exclusive” local agencies in SGMA, but is not required by SGMA to serve in such capacity. (See, Water Code section 10723(c)(1)(C)). Furthermore, the legislation did not supersede or preempt pre-existing agreements.

72. The fifteen designated “exclusive” local agencies, including DWA, are *not required to*, and may opt out of serving as exclusive GSAs. (See Water Code section 10723(c)(2).)

73. When an “exclusive” local agency decides to be a GSA, it still must follow the notice, hearing, and submission requirements set forth in SGMA. (See, Water Code section 10723(c)(3)). An “exclusive” local agency is deemed the exclusive GSA within its statutory boundaries as soon as its complete submission is posted on the DWR website.

74. The term “statutory boundaries” is not defined in SGMA, but DWA does not have jurisdictional powers, and in fact is prohibited from exercising overlapping powers with respect to water service, within Mission Springs’ Service Area and boundaries. Nevertheless, as set forth in

1 detail below, and despite the fact DWA does not serve water within Mission Springs' boundaries
2 and does not pump or rely on groundwater from the Mission Creek Sub-Basin, DWA elected to
3 become the exclusive GSA over substantially all of Mission Springs' Service Area, and did so
4 without or in excess of its jurisdiction.

5 75. Further, SGMA requires that a notice of election include the following
6 information: the service area boundaries; the boundaries of the basin or portion of the basin the
7 agency intends to manage pursuant to SGMA; and the other agencies managing or proposing to
8 manage groundwater with the basin (Water Code section 10723.8(a)(1)); a copy of the resolution
9 forming the new agency (Water Code section(a)(2)); a copy of any new bylaws, ordinances, or
10 new authorities adopted by the local agency (Water Code section 10723.8(a)(3)); and a list of
11 interested parties and an explanation of how their interests will be considered in the development
12 and operation of the groundwater sustainability agency and development and implementation of
13 the agency's sustainability plan (Water Code section 10723.8(a)(4)).

14 76. The requirements of Water Code sections 10723 and 10723.8 notwithstanding,
15 DWA's Notice of Election either did not include any information about, or misrepresented, its
16 service area boundaries; did not identify other agencies managing groundwater within the Sub-
17 Basins (including Mission Springs, or the fact that DWA's proposed groundwater management
18 boundary would overlie and affect Mission Springs); and did not disclose or include an
19 explanation of how the interests of other parties or how implementation of DWA's sustainability
20 plan would take into consideration the interests of Mission Springs, among others.

21 77. Further, SGMA provides that a local agency with authority to implement a basin-
22 specific management plan pursuant to its principal act shall not exercise any authorities granted
23 [in SGMA] in a manner inconsistent with any prohibitions or limitations in its principal act unless
24 the governing board of the local agency makes a finding that the agency is unable to sustainably
25 manage the basin without the prohibited authority.

26 78. DWA does not have authority granted by the DWA Law to compete with and/or
27 take actions in conflict with Mission Springs' statutory powers, duties and authority; and DWA's
28 exercise of exclusive GSA powers over the groundwater managed by Mission Springs is

1 inconsistent with and prohibited by the DWA Law and the County Water District Law under
2 which Mission Springs was formed. Nonetheless, DWA failed to make any finding that it is
3 unable to sustainably manage the Indio, Mission Creek, Garnet Hill, Desert Hot Springs and San
4 Gorgonio Pass Sub-Basins of the Coachella Valley Basin underlying Mission Springs boundaries,
5 without the prohibited authority.

6 79. Following this process, and despite the aforementioned deficiencies in DWA's
7 Notice of Election, DWR deemed DWA's Notice of Election complete, and posted DWA's
8 "exclusive" GSA status over the entire area designated in DWA's Notice of Election, including
9 substantially all of Mission Springs' Service Area and boundaries, and also over the three square
10 mile area.

11 80. Other local agencies not included in the list of fifteen exclusive agencies may also
12 become GSAs after complying with the notice, hearing, and submission requirements of SGMA.
13 However, the decision to become a GSA is effective 90 days after DWR posts notice on its
14 website, if no other local agency submits a notification of its intent to undertake groundwater
15 management in all or a portion of the same area. (Water Code § 17023.8(c).) If another
16 notification is filed within the 90-day period, the decision will not take effect until the other
17 notification is withdrawn or modified to eliminate any overlap. (*Ibid.*) Once the decision takes
18 effect, the GSA shall be presumed to be the exclusive GSA within the area of the basin within the
19 service area of the local agency that the local agency is managing. (*Id.* at § 17023.8 (d).)

20 81. Although not designated "exclusive" under SGMA, on or about November 6,
21 2015, CVWD filed its Notice of Election to be a Groundwater Sustainability Agency ("CVWD
22 Notice of Election"), and on or about November 13, 2016, DWR designated CVWD "exclusive"
23 within its service area boundaries overlying the Mission Creek Sub-Basin and "overlapping"
24 within the Indio Sub-Basin, except within the water service boundaries of the Indio Water
25 Authority and Coachella Water Authority. (A true and complete copy of CVWD's Notice of GSA
26 Election is attached hereto as **Exhibit "H"** and incorporated in full herein.)

27 82. According to DWR's guidelines, once a GSA is deemed exclusive, if another local
28 agency submits a GSA formation notification for a basin or a portion thereof covered by such

1 GSA, that local agency's formation notification will be rejected by the DWR as incomplete. (*See*,
2 GSA Formation Notification Guidelines for Local Agencies, pp. 4-5.) (True and correct copies of
3 GSA Formation Notification Guidelines for Local Agencies published by DWR, dated October
4 27, 2015 and January 6, 2016, are attached hereto as **Exhibit "I"** and incorporated herein by this
5 reference.)

6 **DWA's Public Hearing to Consider the Adoption of DWA Resolution No. 1123, Electing**
7 **to be the Exclusive GSA Within Mission Springs' Boundaries**

8 83. On November 17, 2015, the DWA Board held a public hearing to consider
9 adopting DWA Resolution No. 1123 regarding the formation of a GSA. (True and correct copies
10 of the DWA agenda, staff report and minutes for the November 17, 2015, public hearing of the
11 DWA Board are attached hereto as **Exhibit "J"** and incorporated herein by this reference.)

12 84. The proposed GSA boundaries include areas outside of and beyond DWA's water
13 service area boundaries but within and including a substantial portion of the Mission Springs'
14 jurisdictional service area, overlying the Mission Creek, Indio, Garnet Hill, Desert Hot Springs
15 and San Gorgonio Pass Sub-Basins, and include the three square mile area, which is entirely
16 outside DWA's institutional and service area boundaries.

17 85. Prior to the November 17, 2015, public hearing, Mission Springs submitted a
18 written comment to the DWA Board. (A true and correct copy of Nancy S. Wright's November
19 13, 2015 letter to the DWA Board is attached hereto as **Exhibit "K"** and incorporated herein by
20 this reference.) In her letter, Ms. Wright urged the DWA Board to delay its decision on DWA's
21 GSA election, to provide an opportunity for DWA and Mission Springs to work cooperatively in
22 good faith to collaboratively address any groundwater management issues arising out of SGMA.

23 86. Mission Springs' representatives, and the Mayor and City Manager of Desert Hot
24 Springs submitted oral comments to the DWA Board of Directors at the November 17, 2015,
25 public hearing. (A true and correct copy of the transcript of the DWA public hearing is attached
26 hereto as **Exhibit "L"** and incorporated herein by this reference.) Comments made by Mission
27 Springs and Desert Hot Springs representatives included the following:
28

1 • The Mission Springs General Manager questioned whether DWA’s interpretation
2 of its “statutory boundaries” was correct for the purposes of SGMA, and asked that the DWA
3 Board not act precipitously, so as to allow both Mission Springs and DWA an opportunity to
4 further evaluate the issues raised at the public hearing.

5 • Legal counsel for Mission Springs further reminded the DWA Board that DWA’s
6 proposed action was premature, and neither necessary nor pressing.

7 • The Desert Hot Springs City Manager and Mayor also requested that the DWA
8 Board not act hastily, because the City of Desert Hot Springs is in a position to grow and develop,
9 and the potential consequence of DWA’s election to become a GSA over an area including the
10 City could be to effectively stall such progress. They requested that the DWA Board postpone
11 action on DWA Resolution No. 1123 so as to allow an opportunity to meet and discuss the
12 implications of such action on the current and future development of the City of Desert Hot
13 Springs and on Mission Springs.

14 87. The DWA Board was repeatedly informed, and understood or should have
15 understood, that it was not necessary to take immediate action to become a GSA and that it had a
16 duty to work in good faith with Mission Springs in sharing governance responsibilities for
17 groundwater management. In addition, the DWA Board was also twice informed by DWA’s own
18 Assistant General Manager that the Board did not need to act at that time in order to meet a
19 deadline.

20 88. However, in disregard for its duty to deal in good faith with Mission Springs, the
21 DWA Board acted without even meeting with Mission Springs, and without having a clear
22 understanding of whether or not DWA’s election to become a GSA would preclude any recourse
23 for Mission Springs or cause irreparable harm to its customers or the public. In fact, the DWA
24 Board received conflicting information from its staff and general counsel as to the impact of its
25 action on Mission Springs. DWA’s Assistant General Manager advised the DWA Board that it
26 was his understanding that Mission Springs could not elect to become a GSA in an area within
27 DWA’s “statutory boundaries,” while DWA’s General Counsel advised the DWA Board that
28 Mission Springs could elect to become a GSA and submit its GSA notification to the DWR, and

1 that the DWR could reject both agencies' notifications and instruct the agencies to resolve their
2 dispute at the local level. Clearly the DWA Board did not have a clear understanding of the
3 consequences or the actions it was taking and the lack of urgency in taking such action.

4 89. Moreover, DWA staff and counsel were unable to address with any certainty the
5 issues raised up by the Mission Springs representatives.

6 90. Despite the foregoing, the DWA Board of Directors proceeded unilaterally, and
7 over the objections raised by Mission Springs and others, to adopt DWA Resolution No. 1123 by
8 a vote of 3 to 1.

9 91. On November 20, 2015, DWA served its Notice of Election to become a
10 Groundwater Sustainability Agency ("DWA's Notice of Election") on DWR, to become the
11 exclusive GSA over portions of the Indio Sub-Basin, the Mission Creek Sub-Basin, and the San
12 Gorgonio Pass Sub-Basin. (A true and complete copy of DWA's Notice of Election is attached
13 hereto as **Exhibit "M"** and incorporated in full herein.)

14 92. DWA's Notice of Election was deficient and defective, and failed to comply with
15 the requirements of SGMA, in that did not provide accurate information regarding DWA's
16 service area boundaries, the basin(s) DWA is managing, or other interested parties, including
17 Mission Springs, and other local agencies operating within the Sub-Basins; and included within
18 its alleged statutory boundaries areas which are outside DWA's institutional boundary and water
19 service area, but which are solely and exclusively within the Mission Springs Service Area
20 boundaries. DWA's actions in adopting DWA Resolution No. 1123 and DWA's Notice of
21 Election were without foundation, findings, or any basis in the law.

22 **DWR's Actions Confirming DWA's Exclusive Status Under SGMA**

23 93. Despite recognizing that DWA's Notice of Election included area outside its
24 statutory boundaries, having established guidelines providing that circumstances which may
25 deem a GSA formation notification to be incomplete include situations where the local agency
26 "decid[es] to become or form a GSA for an area that is outside the service area boundary of the
27 local agency(s) forming the GSA," and having recognized in correspondence with DWA a
28

1 prohibition of such inclusion within its intended boundaries absent cooperation with Mission
2 Springs, DWR accepted DWA's Notice of Election as complete.

3 94. Despite the fact that DWA's Notice of Election did not depict its own limited
4 service area or identify Mission Springs' Service Area boundaries or conflicting jurisdiction, as
5 specifically required by SGMA, and further included areas completely outside DWA's statutory
6 boundaries, and contrary SGMA and to DWR's published guidelines providing circumstances
7 under which DWR must deem a GSA formation notification incomplete to include situations
8 where the local agency "decid[es] to become or form a GSA for an area that is outside the service
9 area boundary of the local agency(s) forming the GSA, DWR deemed DWA's Notice of Election
10 complete, and posted it on DWR's website.

11 95. DWA's election under SGMA to be the exclusive GSA over property within the
12 boundaries of Mission Springs' sole jurisdiction as well as most of Mission Springs' Service
13 Area, together with DWR's actions in accepting the Notice of Election as completed and posting
14 it on its website, granted DWA exclusive GSA status under SGMA, bestowing on DWA the
15 unilateral authority granted GSAs under SGMA, including, without limitation, all of the
16 following actions:

- 17 • To acquire land, structures, buildings, easements, privileges and operate any and
18 all works or improvements, within or outside the agency, necessary to proper to carry out any of
19 the purposes of SGMA (Water Code §10726);
- 20 • To impose spacing requirements on new groundwater well construction and
21 impose operating regulations on existing groundwater wells (Water Code §10726(a)(1)); and
- 22 • To control groundwater extractions by regulating, limiting, or suspending
23 extractions from individual groundwater wells or extractions from groundwater wells in the
24 aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or
25 reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction
26 allocations. (Water Code § 10726(a)(2).)

27 96. By their own terms, SGMA, and DWR's implementing guidelines and regulations,
28 do not modify water rights or priorities to use or store groundwater consistent with Section 2 of

1 Article X of the California Constitution, and do not affect proprietary, appropriative and
2 prescriptive rights to groundwater acquired prior to January 1, 2015. (*See* Water Code, §
3 10720.5(a).) More particularly, neither SGMA, nor any groundwater management plan adopted
4 pursuant to SGMA, “determines or alters surface water rights or groundwater rights under
5 common law or any provision of law that determines or grants surface water rights.” (*See* Water
6 Code, § 10720.5(b).)

7 97. As applied, the foregoing SGMA policy statements conflict directly and cannot be
8 reconciled with the delegation of authority to DWA to be an exclusive GSA, to develop a GSP
9 that affects the water rights, and service duties and obligations, of Mission Springs, a local public
10 agency with prior rights and the exclusive right to provide public water service within its
11 boundaries. With chronic overdraft and unsustainable water withdrawals characteristic of the
12 high- and medium- priority groundwater basins, without the participation and cooperation of other
13 local stakeholders, a GSP cannot be developed without affecting competing water service
14 obligations, pumper water rights, or prescriptive water rights. By its own terms, SGMA provides
15 guidance in this area by encouraging local cooperation in groundwater management, and by
16 allowing the designated “exclusive” GSAs to “opt out” of that status in favor of cooperative local
17 management and control. (*See*, Water Code § 10723(c)(2).)

18 98. DWA’s decision to be the exclusive GSA within Mission Springs’ Service Area
19 gives DWA extraordinary powers that threaten Mission Springs’ proprietary water rights to
20 sustainably manage its groundwater, and its right and duty to provide water service to customers
21 within its boundaries. The power assumed by DWA pursuant to its exclusive GSA election
22 creates an irreconcilable overlap and conflict with the statutory powers and authority exercised by
23 Mission Springs in carrying out its primary, mandatory and exclusive purposes and duty of
24 furnishing water to its inhabitants, and also violates the provisions in the 2004 Settlement
25 Agreement for cooperative management of the Sub-Basins.

26 99. In electing to become the exclusive GSA over groundwater managed and
27 controlled by Mission Springs, and over which Mission Springs has established appropriative and
28 prescriptive rights, DWA has effectively usurped Mission Springs’ sovereign rights and authority,

1 and taken ownership and control over the water which Mission Springs requires in order to
2 uphold and perform its statutory obligations as a public agency of the State of California.

3 100. Further, the authority that may be wielded by DWA as the exclusive GSA within
4 Mission Springs' boundaries under SGMA places DWA, a water wholesaler, with the ability to
5 curtail groundwater extractions within the planning area and thereby unilaterally increase the
6 obligation of Mission Springs to pay additional rates, fees and costs to DWA. The unilateral
7 election by DWA without regard to its duty of good faith and fair dealing establishes an inherent
8 conflict of interest whereby DWA can impose restrictions on Mission Springs' appropriative and
9 prescriptive water rights thereby increasing the financial burden on Mission Springs and
10 compelling the purchase of supplemental water from DWA.

11 101. DWA's election under SGMA to exercise exclusive authority over wells, pumping
12 and well distribution within Mission Springs' Service Area, constitutes an unlawful interference
13 with Mission Springs' sovereign authority to exercise its exclusive jurisdictional powers, within
14 its statutory boundaries.

15 **Mission Springs' Public Hearing to Consider Adoption of Resolution No. 2016-01,**
16 **to Become a GSA Within Its Boundaries**

17 102. After the DWA Board adopted DWA Resolution No. 1123 and served its Notice of
18 Election without allowing DWA and Mission Springs to engage in efforts to resolve issues arising
19 out of the application of SGMA as set forth above, Mission Springs properly noticed and held a
20 public hearing to consider its own election to become a GSA within its Service Area, by adoption
21 of MSWD Resolution No. 2016-01.

22 103. On January 19, 2016, Mission Springs held its public hearing to consider adoption
23 of MSWD Resolution No. 2016-01 to become a GSA for the groundwater basins within its
24 Service Area and jurisdictional boundaries. (True and correct copies of the Mission Springs
25 agenda, staff report and minutes for the January 19, 2016 public hearing are attached hereto as
26 **Exhibit N"** and incorporated herein by this reference.)

27 104. Mission Springs did not receive written comment prior to the public hearing.

1 regarding the issues arising from DWA's presumption of exclusive GSA under SGMA. In that
2 letter and in light of the issues raised by the parties, the Executive Program Manager strongly
3 encouraged "all of the local agencies and stakeholders in the Coachella Valley Basin to
4 collaborate and coordinate to form GSAs and manage the groundwater basins sustainably, as this
5 will be critical to the success of sustainable groundwater management." DWR further declined to
6 post Mission Springs' Notice because, according to DWR, at DWA's election, SGMA
7 specifically designated DWA as the exclusive GSA, recognizing that "there are disagreements
8 related to the boundaries assumed by both DWA and [Mission Springs], but those conflicts must
9 be resolved at the local level; DWR does not have the authority to arbitrate the issue." (A true and
10 correct copy of the February 29, 2016 letter is attached hereto as **Exhibit "Q"** and incorporated
11 herein by this reference.)

12 111. Mission Springs' First Amended Petition was filed on April 12, 2016.

13 112. Following receipt of DWR's February 29, 2016 letter and further review of maps
14 and email correspondence between DWA and DWR regarding inconsistencies in the DWA and
15 Mission Springs boundaries, on April 18, 2016, Mission Springs requested that DWR review
16 boundary overlaps between the two agencies. By electronic mail ("email") dated April 21, 2016,
17 DWR deemed the Mission Springs Notice incomplete and again encouraged Mission Springs to
18 coordinate with DWA and other GSA-eligible local agencies to form GSAs and manage the
19 groundwater in the Coachella Valley Basin sustainably. (A true and correct copy of the April 21,
20 2016 email from DWR, with attachments including Mission Springs' April 18, 2016
21 correspondence, is attached hereto as **Exhibit "R"** and incorporated herein by this reference.)

22 113. When the parties were unable to resolve the jurisdictional issues related to DWA's
23 presumptive exclusive GSA status, and at the suggestion of DWR legal counsel, on or about
24 September 27, 2016, Mission Springs filed an "Amended" Notice of Election to become a
25 Groundwater Sustainability Agency ("Amended Notice"), seeking GSA status over three small
26 areas outside the DWA's claimed "statutory boundaries," overlying a portion of the San Gorgonio
27 Pass Sub-Basin, the Indio Sub-Basin, the Mission Creek Sub-Basin, and the Desert Hot Springs
28 Sub-Basin of the Coachella Valley Basin. (A true and correct copy of the Amended Notice is

1 attached hereto as **Exhibit “S”** and incorporated herein by this reference.) The Amended NOE
2 also specifically reserved Mission Springs’ rights claimed in the February 3, 2016 Notice of
3 Election, seeking to preserve its right to manage groundwater within its entire jurisdictional
4 boundaries.

5 114. DWR thereafter posted the Amended Notice on its website. However, due to
6 DWA’s election to serve as GSA over areas wholly outside its jurisdictional boundaries, Mission
7 Springs was designated as “overlapping” in the San Gorgonio Pass, Indio and Mission Creek
8 Sub-Basins, in those areas identified in the Amended Notice. As a result, and according to DWR,
9 no GSA has been designated for those areas.

10 **Preparation and Submission of the Mission Creek and Indio Sub-Basin**

11 **Alternative Plans**

12 115. Subsequent to the postings by DWR of the DWA and CVWD Notices of Election,
13 and pursuant to Water Code Section 10733.6, and Title 23, Cal. Code of Regulations, Division 2,
14 Chapter 1.5, Subchapter 2, Article 9, and Sections 350 *et seq.* thereof, including section 358.2
15 (Alternatives to Groundwater Sustainability Plans) (collectively, the “GSP Regulations”), DWA
16 and CVWD commenced preparation of Alternative Plans, and related Bridge Documents for the
17 Indio and Mission Creek Sub-Basins (collectively, the “Alternative Plans”). Those Alternative
18 Plans were submitted to DWR on or about December 29, 2016.

19 116. The Mission Creek Sub-Basin Alternative Plan is based on the existing Mission
20 Creek and Garnet Hill Water Management Plan prepared by DWA, CVWD and Mission Springs,
21 and related Bridge Document which was jointly prepared and submitted to DWR in accordance
22 with the terms of the 2004 Settlement Agreement. Mission Springs provided comments, prepared
23 and requested a memorandum of understanding (“MOU”) for cooperative participation in
24 groundwater management activities and governance of the Mission Creek Sub-Basin and
25 Alternative Plan; but, although Mission Springs is a recognized stakeholder in the Mission Creek
26 Sub-Basin and entitled to participate fully in joint cooperative groundwater management in the
27 Mission Creek Sub-Basin, Mission Springs’ requests have been largely ignored by CVWD and
28 DWA.

1 117. The Indio Sub-Basin Alternative Plan is based on the existing Coachella Valley
2 Water Management Plan prepared by DWA and CVWD, along with the Indio Water Authority
3 and the Coachella Water Authority; however, in violation of the 2004 Settlement Agreement
4 providing for cooperative management of the Sub-Basins, including the Indio Sub-Basin, DWA
5 and CVWD did not inform or include Mission Springs in the Indio Sub-Basin Alternative Plan
6 preparation process. Although Mission Springs' boundaries substantially overlap the Indio Sub-
7 Basin, the Coachella Valley Water Management Plan recognizes Mission Springs as a stakeholder
8 in the Indio Sub-Basin, and Mission Springs has wells and customers within the Indio Sub-Basin,
9 DWA and CVWD deliberately excluded Mission Springs from cooperative planning, preparation
10 and submission of the Indio Sub-Basin Alternative Plan, and from all aspects of groundwater
11 management in that Sub-Basin. Mission Springs nonetheless provided comments, prepared and
12 requested a memorandum of understanding ("MOU") for cooperative governance and
13 participation in the Indio Sub-Basin Alternative Plan and groundwater management activities; but
14 those requests were largely ignored, and rejected, by CVWD and DWA.

15 118. More specifically, by letters dated November 21, 2016, addressed to DWA and
16 CVWD, Mission Springs requested to be included in the planning and preparation of the Indio
17 Sub-Basin Alternative Plan, stating that "MSWD would like to have a cooperative relationship
18 with all of the interested parties in implementing SGMA in the sub-basins for which it has
19 overlapping GSA authority, including the Indio Sub-Basin." In furtherance of that request,
20 Mission Springs prepared and provided a draft MOU for the Indio Sub-Basin, using the existing
21 Indio Sub-Basin MOU as a model, the terms of which Mission Springs believed were both fair
22 and reasonable, and would form the basis for a "long term cooperative relationship among the
23 GSAs in the Indio Sub-Basin." (True and correct copies of the November 21, 2016, letters sent to
24 DWA and CVWD, with the attached draft MOU, are attached hereto collectively as **Exhibit "T"**
25 and incorporated herein by this reference.)

26 119. On December 19, 2016, DWA and CVWD delivered a joint letter responding to
27 Mission Springs' request for an amendment to the existing Indio Sub-Basin MOU to recognize
28 Mission Springs as a GSA having management authority over the Indio Sub-Basin. It stated:

1 “...we do not agree with the assertion in your letter that MSWD is currently a GSA within the
2 Indio-Sub-Basin. Instead, DWR has identified a very small area of the Indio Sub-Basin as being
3 in “overlap” status between DWA and MSWD for which neither entity has yet been awarded
4 GSA status. DWA has been recognized by DWR as the exclusive GSA for the balance of that
5 portion of the Indio Sub-Basin within DWA’s boundaries. Because MSWD is not currently a
6 GSA in the Indio Sub-Basin, we do not believe an amendment to the MOU is warranted at this
7 time.” (A true and correct copy of the December 19, 2016, response by DWA and CVWD, is
8 attached hereto as **Exhibit “U”** and incorporated herein by this reference.) Importantly, the joint
9 response from DWA and CVWD failed to recognize that the reason Mission Springs has not been
10 designated an exclusive GSA over portions of the Mission Creek and Indio Sub-Basins is due to
11 the fact that DWA is improperly attempting to claim exclusive GSA status over nearly all of
12 Mission Springs’ jurisdictional Service Area, including the three square-mile area which is
13 entirely outside DWA’s boundaries.

14 **FIRST CAUSE OF ACTION**

15 **Writ of Administrative Mandamus—CCP § 1094.5**

16 **(Against DWA, DWR and Does 1-25, inclusive)**

17 120. Mission Springs re-alleges and incorporates herein by reference, each and every
18 allegation set forth in Paragraphs 1 through 119, inclusive, of this Petition and Complaint.

19 121. SGMA requires that a noticed public hearing be held as part of the local agency’s
20 exercise of its option to become a GSA under Government Code section 10723. Government
21 Code section 10723(c)(3) provides that a local agency with authority to implement a basin-
22 specific management plan pursuant to its principal act shall not exercise any authorities granted
23 [in SGMA] in a manner inconsistent with any prohibitions or limitations in its principal act unless
24 the governing board of the local agency makes a finding that the agency is unable to sustainably
25 manage the basin without the prohibited authority.

26 122. DWA does not have authority granted by the DWA Law to compete with and/or
27 take actions in conflict with Mission Springs’ statutory powers, duties and authority; and DWA’s
28 exercise of exclusive GSA powers over the groundwater managed by Mission Springs is

1 inconsistent with and prohibited by the DWA Law and the County Water District Law under
2 which Mission Springs was formed. Nonetheless, DWA failed to make any finding that it is
3 unable to sustainably manage the Indio, Mission Creek, Garnet Hill, Desert Hot Springs and San
4 Gorgonio Pass Sub-Basins of the Coachella Valley Basin underlying Mission Springs boundaries,
5 without the prohibited authority.

6 123. Further, as alleged above and by way of example, DWA's Notice of Election was
7 not adopted in accordance with the requirements of SGMA, because:

8 a. It does not include a map depicting DWA's service area, or clear information
9 regarding the differences between DWA's service boundaries (within which it provides retail
10 water service), its statutory boundaries, and its institutional State Water groundwater
11 replenishment boundaries. (*See* Water Code § 10723.8(a)(1).)

12 b. It improperly states the extent of and limitations on DWA's statutory authority
13 within its boundaries.

14 c. It does not consider the interests of all stakeholders and beneficial uses and users
15 of groundwater within its claimed statutory boundary, including, without limitation, Mission
16 Springs. (*See*, Water Code § 10723.2.) To the contrary, DWA's Notice of Election clearly
17 indicates its disregard of the Mission Springs' interests, as the single most important beneficial
18 user of groundwater in the Mission Creek Sub-Basin, and Mission Springs' expansive Service
19 Area overlying the Indio Sub-Basin.

20 d. It does not include any explanation of how Mission Springs' interests will be
21 considered in the development and operation of the GSA and the development and
22 implementation of GSPs for the Mission Creek, Garnet Hill, San Gorgonio Pass or Indio Sub-
23 Basins, or how DWA will treat the approved and adopted multi-agency groundwater management
24 plans already in place in the Coachella Valley Basin. (*See*, Water Code § 10723.8(a)(4)).

25 124. Further, DWA's actions in adopting Resolution No. 1123 were arbitrary,
26 capricious, and not supported by substantial evidence in that there is no evidence in the record
27 that supports the legislative assumption and basis for DWA's claim as exclusive GSA for the
28 groundwater underlying Mission Springs' Service Area, including the three square-mile area

1 wholly outside DWA’s jurisdictional boundaries, which includes, without limitation, portions of
2 the Indio, Mission Creek, Garnet Hill and San Gorgonio Pass Sub-Basins.

3 125. Additionally, there is no evidence in the record, or elsewhere, that supports
4 DWA’s determination that its statutory boundaries and authority include, for all purposes under
5 SGMA, substantially the entire jurisdictional area within which Mission Springs has and
6 continues to actively exercise its statutory groundwater management obligations and retail water
7 and wastewater services; or that DWA has or may assume exclusive authority and control over
8 groundwater otherwise owned, managed and controlled by Mission Springs for the beneficial
9 purpose of providing that public water supply. This legally and factually unfounded determination
10 of the DWA Board is contrary to the DWA Law, the California Constitution, statutory law, and
11 website information provided by DWA itself to the general public.

12 126. Based on the evidence in the record of the DWA public hearing, a reasonable
13 person could not have reached the same conclusion regarding DWA’s statutory authority or the
14 scope and reach of DWA’s statutory boundary, such that it would be reasonable for DWA to
15 claim exclusive status as the GSA within Mission Springs’ Service Area.

16 127. DWA exceeded its authority by declaring itself the GSA over an area that exceeds
17 its statutory boundary and interferes in the rightful exercise of Mission Springs’ statutory
18 jurisdictional authority and rights conferred under State law.

19 128. DWA’s Notice of Election was not supported by the required findings,
20 information, or any evidence thereof in the record. In response to Mission Springs’ repeated
21 questions regarding DWA’s statutory boundary and authority, the DWA Board should have
22 investigated, but failed to do so, such that the approval of DWA Resolution No. 1123 and the
23 DWA Notice of Election was overreaching, arbitrary and capricious.

24 129. The law is clear regarding the facial requirements for DWA’s Notice of Election,
25 including GSA boundary limitations, and there is substantial evidence in the record that
26 significant questions were raised at DWA’s public hearing on November 17, 2015, such that the
27 DWA Board should have investigated, but did not, whether DWA’s statutory boundary and
28 jurisdictional authority were accurately reflected in its Notice of Election, and whether DWA was

1 properly determined to be an agency created by statute with the legal authority to manage
2 groundwater within and covering the Mission Springs' Service Area.

3 130. DWA did not proceed in the manner required by law in adopting DWA Resolution
4 No. 1123, and submitting the DWA Notice of Election to DWR. The DWA Board's decision to
5 exercise jurisdiction as the exclusive GSA over Mission Springs' Service Area was not supported
6 by the findings, and findings upon which its action could be based were not supported by any
7 evidence that was before the DWA Board.

8 131. Moreover, the actions of DWA in adopting DWA Resolution No. 1123 and filing
9 the DWA Notice of Election were in excess of DWA's jurisdiction, denied Mission Springs, and
10 the public, a fair hearing, constituted prejudicial abuses of discretion, and were taken in violation
11 of State law and Mission Springs' statutory rights and jurisdictional authority.

12 132. The actions of the DWA Board were intended to, and did, interfere with Mission
13 Springs' fundamental and constitutionally protected sovereign rights and water rights.

14 133. Further, following DWA's arbitrary, capricious and prejudicial abuse of its
15 discretion as described above, and based thereon, DWR deemed DWA's Notice of Election,
16 including those portions related to area clearly outside its "statutory boundaries," as "complete,"
17 posted it on its website, and designated DWA as the "exclusive" GSA over the requested portions
18 of the Sub-Basins. In contrast, Mission Springs' Notice of Election, whereby it elected to become
19 a GSA over its Service Area, was rejected in its entirety by DWR, including the portions of its
20 Notice of Election that did not overlap with, and were wholly outside DWA's boundaries.
21 Moreover, following Mission Springs' submission of its Amended Notice, DWR designated the
22 three square mile area for which Mission Springs sought GSA status "overlapping" with DWA,
23 with the result that no GSA has been established for those areas.

24 134. Had DWR properly rejected, or partially rejected, DWA's Notice of Election as
25 contemplated by its Guidelines, there would have been no "overlap," at least as to the three
26 square mile area exclusively within Mission' Springs' jurisdiction, and Mission Springs' would
27 have been designated exclusive GSA over that area.

1 135. Further, DWR's actions in wholly rejecting Mission Springs' original Notice of
2 Election, and then designating Mission Springs' Amended Notice as "overlapping," have
3 prevented Mission Springs from rightfully becoming the GSA over its entire Service Area, to its
4 detriment, while at the same time approving DWA's application rather than deeming it wholly or
5 partially incomplete. In so doing, DWR failed to comply with the procedures required by law, and
6 its actions constituted an abuse of discretion and were arbitrary and capricious.

7 136. Mission Springs' resort to this Court is timely pursuant to Code of Civil Procedure
8 Section 1094.6.

9 **SECOND CAUSE OF ACTION**

10 **Writ of Mandate – Code of Civil Procedure § 1085**

11 **(Against DWA, DWR and Does 1-25, inclusive)**

12 137. Mission Springs re-alleges and incorporates herein by reference, each and every
13 allegation set forth in Paragraphs 1 through 119, inclusive, of this Petition and Complaint.

14 **As to DWA:**

15 138. In adopting DWA Resolution No. 1123 and filing of its Notice of Election, DWA
16 failed to comply with the mandatory, substantive statutory and procedural requirements of
17 SGMA.

18 139. DWA's election to serve as the exclusive GSA outside its own statutory boundary
19 and within Mission Springs' Service Area constituted an abuse of discretion, exceeded DWA's
20 authority, was arbitrary, capricious, totally lacking in evidentiary support, and is invalid as a
21 matter of law.

22 140. As a duty resulting from its office, trust or station, DWA is required by SGMA to
23 adopt a resolution approving, and to prepare and file, its notice of election to become a GSA,
24 which complies with the mandatory requirements of SGMA, based on true and accurate facts, and
25 which supports the exercise of powers that are within its jurisdictional authority.

26 141. DWA's actions in adopting DWA Resolution No. 1123 and filing its Notice of
27 Election to become the exclusive groundwater manager for the Sub-Basins underlying Mission
28 Springs' Service Area, for which Mission Springs has statutory groundwater management

1 authority and groundwater rights, did not comply with the requirements of SGMA, were not
2 justified or based on the facts and information before the DWA Board, and are specifically
3 enjoined by the law.

4 142. DWA's Notice of Election was also defective, and incomplete, because it failed to
5 designate DWA's service area boundaries, or the boundaries of Mission Springs, as required by
6 Water Code section 10723.8(a)(1).

7 143. Mission Springs is informed and believes that the DWA adopted DWA Resolution
8 No. 1123 and filed its Notice of Election in deliberate disregard for Mission Springs' statutory
9 rights and authority, and without recognition of or compliance with the language and intent of the
10 SGMA.

11 144. DWA's unilateral attempt to gain exclusive control of Mission Springs' water
12 service operations, including areas wholly outside DWA's jurisdictional boundaries was not a
13 valid exercise of DWA's powers, but was a palpably unreasonable, arbitrary, capricious and an
14 unlawful and invalid attempt to usurp Mission Springs' authority and duty to provide public water
15 service within its territorial boundaries, and to manage the groundwater upon which that service
16 depends.

17 145. DWA's conduct in adopting DWA Resolution No. 1123 and filing its Notice of
18 Election with DWR was arbitrary and capricious, and a violation of Mission Springs' rights and
19 lawful exercise of its statutory powers and authority. The actions constituted an abuse of
20 discretion, and were totally lacking in evidentiary support, and were taken in disregard of the
21 express language and intent of SGMA, rendering DWA's decisions invalid and unenforceable.

22 146. For the reasons set forth hereinabove, the actions taken by DWA in approving
23 DWA Resolution No. 1123 and asserting authority as exclusive GSA over an area that exceeds its
24 statutory boundary and includes the service area boundary of Mission Springs, exceeded its
25 authority, were *ultra vires*, and are invalid.

26 147. In taking the actions alleged above, DWA failed to follow procedures required by
27 SGMA, and such action will materially, detrimentally and unlawfully affect Mission Springs'
28

1 ability to effectively manage the groundwater upon which it relies in providing water and
2 wastewater service to customers within its Service Area boundaries.

3 **As to DWR:**

4 148. DWR is charged under SGMA with the ministerial duty to review notices of GSA
5 election under SGMA, and to determine whether the notices of election have complied with
6 applicable requirements and regulations. If a notice of GSA election fails to comply with
7 applicable requirements, it must be deemed “incomplete” and shall not be posted on DWR’s
8 website. DWR’s administration and implementation of SGMA, including the determination of the
9 completeness of notices of election is considered ministerial, and SGMA provides no authority to
10 DWR to mediate, arbitrate or facilitate GSA disputes among and between local water agencies.

11 149. When DWA submitted its Notice of Election to DWR to become an exclusive
12 GSA over the Indio, Mission Creek and San Gorgonio Sub-Basins, its election included
13 substantially all of Mission Springs’ Service Area, including the three square mile area and other
14 land exclusively within Mission Springs’ jurisdiction, and wholly outside of DWA’s asserted
15 statutory boundaries.

16 150. Under DWR’s own GSA Formation Notification Guidelines for Local Agencies
17 that were in effect at the time of DWA’s submittal, examples of circumstances under which a
18 GSA formation notification will be deemed incomplete include, such as here, where the local
19 agency “decid[es] to become or form a GSA for an area that is outside the service area boundary
20 of the local agency(s) forming the GSA.” Moreover, via email correspondence between DWR and
21 DWA prior to DWA’s Notice of Election, DWR indicated that some level of legal coordination
22 between Mission Springs would likely be required before it could include that area in DWA’s
23 intended GSA boundaries.

24 151. Nonetheless, and despite DWA not having a coordination or other agreement with
25 Mission Springs, DWR deemed DWA’s entire Notice of Election, including those portions
26 related to area clearly outside its “statutory boundaries,” as “complete,” posted it on its website,
27 and designated DWA as the “exclusive” GSA over the requested portions of the Sub-Basins.
28 Further, DWA’s Notice of Election should have been deemed incomplete because it omitted to

1 indicate DWA's service area, or Mission Springs' jurisdictional boundaries within its proposed
2 exclusive GSA boundaries.

3 152. In contrast, Mission Springs' Notice of Election, whereby it elected to become a
4 GSA over its Service Area, was rejected in its entirety by DWR, including the portions of its
5 Notice of Election that did not overlap with, and were wholly outside DWA's boundaries.
6 Moreover, following Mission Springs' submission of its Amended Notice, DWR designated the
7 three square mile area for which Mission Springs sought GSA status "overlapping" with DWA,
8 with the result that no GSA has been established for those areas.

9 153. Had DWR properly rejected, or partially rejected, DWA's Notice of Election as
10 contemplated by its Guidelines, there would have been no "overlap," at least as to the three
11 square mile area exclusively within Mission' Springs' jurisdiction, and Mission Springs' would
12 have been designated exclusive GSA over that area.

13 154. In deeming DWA's Notice of Election complete, posting it on its website, and
14 designating DWA as the "exclusive" GSA over the Sub-Basins, rather than deeming the entire
15 application (or part of the application) incomplete, DWR failed to perform its ministerial duty
16 under SGMA, and acted arbitrarily, abused its discretion, and took actions contrary to law and its
17 own published Guidelines.

18 155. Further, DWR's actions in wholly rejecting Mission Springs' original Notice of
19 Election, and then designating Mission Springs' Amended Notice as "overlapping," has prevented
20 Mission Springs from rightfully becoming the GSA over its entire Service Area, to its detriment,
21 while at the same time approving DWA's application rather than deeming it wholly or partially
22 incomplete. In so doing, DWR failed to comply with the procedures required by law, and its
23 actions constituted an abuse of discretion and were arbitrary and capricious.

24 **THIRD CAUSE OF ACTION**

25 **Breach of Contract (Specific Performance)**

26 **(Against DWA and CVWD, and DOES 26 - 50, inclusive)**

27 156. Mission Springs re-alleges and incorporates herein by reference, each and every
28 allegation set forth in Paragraphs 1 through 119, inclusive, of this Petition and Complaint.

1 157. The 2004 Settlement Agreement expressly provides, as consideration for Mission
2 Springs' dismissal of the litigation and payment of replenishment assessments, as set forth herein
3 above, that the parties will jointly and cooperatively manage the Sub-Basins; that Mission Springs
4 is a party to the Management Committee; that the Management Committee would meet quarterly
5 beginning in 2005 at the offices of CVWD; and that the purpose of the Management Committee
6 was to exchange information, express ideas and otherwise discuss, in a free, comprehensive, and
7 frank manner any and all aspects regarding the management of water resources within the
8 Mission Creek Sub-Basin, the Indio Sub-Basin, and the Garnet Hill Sub-Basin of the Upper
9 Coachella Valley Basin. The Agreement further provides the discussions at the quarterly meeting
10 shall include, without limitation, quantities and timing of water to be recharged into the Sub-
11 Basins, and other aspects of groundwater management within the Sub-Basins. The 2004
12 Settlement Agreement further reserved for all parties, including Mission Springs, final and
13 absolute discretion to approve or disapprove, prior to commitment, any and all commitments,
14 expenditure or obligations (financial or otherwise) with respect to the Sub-Basins.

15 158. Mission Springs is informed and believes that in or about 2016, by an (undated)
16 Memorandum of Understanding Regarding Governance of the Indio Sub-Basin Under the
17 sustainable Groundwater Management Act ("Indio Sub-Basin MOU"), DWA, CVWD, together
18 with other local agencies entered into a cooperative agreement regarding governance of the Indio
19 Sub-Basin. Mission Springs was not notified of this agreement, and was not asked to participate
20 in the cooperative management of the Indio Sub-Basin. (A true and complete copy of the Indio
21 Sub-Basin MOU is attached hereto as **Exhibit "V"** and incorporated in full herein.)

22 159. Further, commencing with CVWD's preparation and adoption of the Coachella
23 Valley Water Management Plan Update in 2012, and including CVWD's and DWA's approval
24 and filing of their SGMA Notices of GSA elections in 2015; and the preparation and submission
25 of the Indio Sub-Basin Alternative Plan in December 2016, CVWD and DWA deliberately
26 excluded Mission Springs from notice of or inclusion in any discussions or meetings in which
27 those plans and decisions were made, also in breach of the express terms of the 2004 Settlement
28 Agreement.

1 160. Further, the Indio Sub-Basin Alternative Plan Bridge Document omits to identify
2 Mission Springs as a stakeholder in the Indio Sub-Basin, although a significant portion of
3 Mission Springs' jurisdictional boundary overlies, and Mission Springs has customers and a
4 number of active water production wells in, the Indio Sub-Basin.

5 161. Moreover, during DWA's public hearing, including written comments submitted
6 in connection therewith, as well as during the Indio Sub-Basin Alternative Plan planning and
7 preparation process, Mission Springs repeatedly requested notice and the ability to participate in
8 the groundwater planning and governance process for the Indio Sub-Basin, but those requests
9 were ignored or rejected by DWA and/or CVWD, in further repudiation and breach of the express
10 and material terms of the 2004 Settlement Agreement. (See, e.g., Exhibits "T" and "U" hereto.)
11 The Indio Sub-Basin Alternative Plan is also clear on its face that Mission Springs was excluded
12 from the Alternative Plan planning and preparation process.

13 162. Further, despite the clear terms of the 2004 Settlement Agreement, Mission
14 Springs' request to be a participant in and a party to the Memorandum of Understanding
15 Regarding Governance of the Indio Sub-Basin Under the Sustainable Groundwater Management
16 Act ("Indio Sub-Basin MOU"), which had been secretly approved by DWA, CVWD and other
17 stakeholder agencies in the Indio Sub-Basin, was unreasonably and unfairly ignored and
18 ultimately rejected by DWA and CVWD. (See, Exhibits "T" and "U" hereto.)

19 163. DWA's and CVWD's willful and deliberate refusal to allow Mission Springs to
20 participate in the Indio Sub-Basin groundwater planning programs and projects discussed
21 hereinabove, as required by the 2004 Settlement Agreement, was unjustified and unexcused.

22 164. DWA and CVWD's actions impair the viability of the 2004 Settlement
23 Agreement, affect Mission Springs' ability to pay debt service based on its ability to provide
24 water and set rates based on an anticipated service level; and impair Mission Springs' ability to
25 incur future debt because of the unpredictability of water availability.

26 165. Moreover, DWA's actions in adopting DWA Resolution No. 1123 and filing its
27 Notice of Election over areas that fall exclusively within Mission Springs' jurisdiction, is a
28 further violation of the 2004 Settlement Agreement terms and its covenant of good faith and fair

1 dealing. Specifically, DWA's actions in prohibiting Mission Springs from becoming the GSA
2 within its own jurisdiction and then using its own improperly gained exclusive GSA designation
3 to purposefully exclude Mission Springs from cooperative management of groundwater within its
4 service area, and participation in the MOU and Alternative Plan covering the Indio Sub-Basin,
5 was done in bad faith and in violation of both the express terms and spirit of the 2004 Settlement
6 Agreement.

7 166. The foregoing breaches of the 2004 Settlement Agreement as set forth herein and
8 above, have damaged Mission Springs by impairing its statutory authority to participate in the
9 control of its groundwater rights and its prescriptive rights to the water required to provide service
10 to its customers within its boundaries; and deprive Mission Springs of the substantial benefit it
11 reasonably anticipated from the Agreement.

12 167. In entering into the 2004 Settlement Agreement, Mission Springs relied in good
13 faith and to its financial detriment on the consideration set forth in the Agreement.

14 168. Mission Springs has performed all conditions, covenants and promises required by
15 the District to be performed in accordance with the terms and conditions of the 2004 Settlement
16 Agreement, including, without limitation, participation in good faith and to the District's financial
17 detriment, in the Mission Creek and Garnet Hill Sub-Basin Water Management Plan and the
18 Coachella Valley IRWMP.

19 169. Mission Springs was at all times, and still is, ready, willing, and able to perform all
20 conditions required by it on its part to be performed in accordance with the terms and conditions
21 of the 2004 Settlement Agreement, and is able to perform in all respects under SGMA, as a GSA
22 in the Mission Creek, Garnet Hill and Indio Sub-Basins, and throughout its boundaries.

23 170. In fact, Mission Springs repeatedly requested notice and participation in the
24 groundwater planning efforts for the Indio Sub-Basin. However, despite and in violation of the
25 commitment to cooperation and joint groundwater management in the Indio and Mission Creek
26 Sub-Basins, and the binding terms of the 2004 Settlement Agreement, DWA and CVWD
27 deliberately excluded Mission Springs from quarterly or other management committee meetings
28

1 and discussions regarding contents and preparation of the Coachella Valley Water Management
2 Plan and Plan Update, and the Indio Sub-Basin Alternative Plan.

3 171. At all times mentioned herein, DWA and CVWD have been able to, and could
4 have included Mission Springs in their groundwater planning and management activities in the
5 Indio Sub-Basin, including, without limitation, recognizing Mission Springs as a GSA within the
6 Indio Sub-Basin and within its jurisdictional boundaries, allowing Mission Springs to participate
7 equally as a “partner” in the Indio Sub-Basin MOU for governance of the Indio Sub-Basin, and
8 recognizing and including Mission Springs as a stakeholder in the Indio Sub-Basin Alternative
9 Plan.

10 172. To the extent SGMA granted DWA the right, but not the obligation, to assume
11 control of the groundwater basins on which Mission Springs relies and which are within Mission
12 Springs’ exclusive Service Area, and otherwise to affect Mission Springs’ legal rights and
13 statutory authority, the covenants of the 2004 Settlement Agreement, which are both express and
14 implied, impose a duty on DWA to exercise its discretion in good faith and in accordance with
15 fair dealing. DWA’s breach of these covenants undermines Mission Springs’ final and absolute
16 discretion to approve or disapprove, in advance, any and all commitments, expenditure or
17 obligations (financial or otherwise) with respect to the Sub-Basins.

18 173. For the reasons heretofore stated, Mission Springs has no adequate legal remedy in
19 that damages cannot be properly ascertained and will be inadequate to compensate Mission
20 Springs and its customers for the detriment they suffer by virtue of DWA’s and CVWD’s
21 exclusion of Mission Springs from planning, management and control of groundwater within its
22 jurisdictional boundaries, which exclusion constitutes an ongoing breach of the 2004 Settlement
23 Agreement.

24 174. Mission Springs hereby seeks orders specifically enforcing the 2004 Settlement
25 Agreement and requiring DWA and CVWD to adhere to the terms thereof, including, but not limited
26 to: (1) requiring DWA and CVWD to give notice to and include Mission Springs in the
27 groundwater planning and management activities for the Indio Sub-Basin; (2) requiring DWA to
28 withdraw the portions of its Notice of Election seeking to become the “exclusive” GSA over areas

1 representatives, DWA and CVWD have deliberately and in bad faith prevented and prohibited
2 Mission Springs from participating in cooperative management of the Sub-Basins.

3 178. Moreover, DWA's actions in adopting DWA Resolution No. 1123 and filing its
4 Notice of Election over areas that fall exclusively within Mission Springs' jurisdiction, is a
5 further violation of the 2004 Settlement Agreement terms and its express and implied covenant of
6 good faith and fair dealing. Specifically, DWA's actions in prohibiting Mission Springs from
7 becoming a GSA within its own Service Area and then using its own improperly gained exclusive
8 GSA status to purposefully exclude Mission Springs from cooperative management of Sub-
9 Basins, and participation in the MOU and Alternative Plan covering the Indio Sub-Basin, was
10 done in bad faith and in violation of both the express terms and spirit of the 2004 Settlement
11 Agreement.

12 179. The actions of DWA and CVWD as alleged herein were taken in bad faith with the
13 specific intent to frustrate the benefits Mission Spring was to receive under the 2004 Settlement
14 Agreement.

15 180. To the extent SGMA granted DWA the right, but not the obligation, to assume
16 control of the groundwater basins on which Mission Springs relies and which are within Mission
17 Springs' exclusive service area, and otherwise to affect Mission Springs' legal rights and
18 statutory authority, the implied covenants of the 2004 Settlement Agreement, which are both
19 express and implied, impose a duty on DWA to exercise its discretion in good faith and in
20 accordance with fair dealing. DWA's breach of these covenants undermines Mission Springs'
21 final and absolute discretion to approve or disapprove, in advance, any and all commitments,
22 expenditure or obligations (financial or otherwise) with respect to the Sub-Basins.

23 181. DWA and CVWD breached the covenants of good faith and fair dealing arising
24 from the 2004 Settlement Agreement, by expressly and deliberately excluding Mission Springs
25 from participation in and the continuing right to control the groundwater upon which Mission
26 Springs relies in providing its statutory water service within its boundaries.

1 **FIFTH CAUSE OF ACTION**

2 **Declaratory Relief - SGMA**

3 **(Against DWA and Does 1-25, inclusive)**

4 182. Mission Springs re-alleges and incorporates herein by reference, each and every
5 allegation set forth in Paragraphs 1 through 119, inclusive, of this Petition and Complaint.

6 183. An actual controversy has arisen and now exists between the parties regarding
7 their respective rights, duties, powers and jurisdiction under SGMA and other applicable laws.

8 184. Mission Springs contends that DWA has, *inter alia*, acted in violation of
9 applicable laws, in adopting DWA Resolution No. 1123 and filing its Notice of Election, more
10 particularly as follows:

11 a. Statutory boundary designation – DWA claims its “statutory boundary” for all
12 purposes includes a substantial portion of the Mission Springs’ water Service Area, granting
13 DWA overlapping control competing directly with Mission Springs’ right and authority to
14 manage groundwater and provide public water service within its service boundaries; and Mission
15 Springs contends the DWA statutory boundary, and DWA’s power and authority over the
16 groundwater upon which Mission Springs relies, does not and cannot overlap within Mission
17 Springs’ Service Area and/or compete with its exclusive statutory powers and authority to provide
18 water service to its customers within its jurisdictional boundaries.

19 b. Groundwater management agency or district created by statute – DWA contends
20 that it is a groundwater management agency created by statute, and Mission Springs contends
21 DWA is a State Water contractor with limited jurisdiction to import of State Water for
22 replenishment of groundwater basins underlying Mission Springs and to impose and collect
23 replenishment assessments and charges related to its State Water contract obligations.

24 c. Exclusive groundwater management authority – DWA contends that pursuant to
25 SGMA it is the exclusive GSA for the groundwater underlying Mission Springs’ Service Area,
26 including the Mission Creek, Indio, Desert Hot Springs and San Gorgonio Pass Sub-Basins, and
27 that DWA has and intends to exercise exclusive authority to manage all of the groundwater in
28 those basins. Mission Springs contends, *inter alia*, that DWA’s claim of exclusivity under SGMA

1 is invalid as an unlawful interference with Mission Springs' power and authority within its own
2 exclusive statutory service area.

3 d. DWA's conflict of interest – DWA contends that it is entitled to act as the
4 exclusive GSA within its own service area and for the benefit of its retail customers, and at the
5 same time DWA's Board of Directors should also control groundwater management and public
6 water service within the Mission Springs exclusive Service Area and jurisdiction; and Mission
7 Springs contends the DWA's fundamental loyalty and commitment to its retail water customers
8 creates an irreconcilable and unlawful conflict of interest with respect to its assertion of control
9 over groundwater management affecting Mission Springs' retail service customers and
10 inhabitants, such that DWA's Board of Directors may not simultaneously exercise the powers and
11 authority of an exclusive GSA within Mission Springs' jurisdictional boundaries, and also
12 maintain loyalty to its retail customers.

13 e. SGMA, as applied, by making DWA the exclusive GSA within Mission Springs'
14 Service Area, usurps Mission Springs' water rights – DWA contends that it has the absolute right
15 to be the exclusive GSA within Mission Springs' boundaries, and to control and manage the
16 groundwater underlying Mission Springs; and Mission Springs contends that, as applied by
17 DWA, SGMA interferes with and illegally conflicts with Mission Springs' statutory rights and
18 authority, and with Mission Springs' groundwater rights. DWA's exercise of authority over
19 wells, pumping, and well distribution within Mission Springs' territory, granted by SGMA, as
20 applied, constitutes an unlawful interference with Mission Springs' powers and jurisdiction
21 within its territory.

22 185. The dispute continues to exist between Mission Springs and DWA as to DWA's
23 election to be the exclusive GSA over an area which includes the entire Mission Springs Service
24 Area. Mission Springs contends that DWA's jurisdiction over groundwater underlying Mission
25 Springs is limited to replenishment of the Mission Creek, Garnet Hills and Indio Sub-Basins with
26 imported water; and that what DWA claims as its "statutory boundaries" were created solely for
27 the institutional purpose of contracting for and importing State Water into the Coachella Valley.

1 186. Mission Springs further contends that the “statutory boundaries” established
2 through the 1962-1963 annexation proceedings were never intended to, and do not confer on
3 DWA the power or authority to interfere with Mission Springs’ exclusive water service authority
4 and duties, or any of the powers attendant thereto or conflicting therewith; and that any expansion
5 of the DWA boundaries was solely for the mutually beneficial purpose of enabling DWA to
6 contract for imported water to augment the Coachella Valley Basin. On the other hand, DWA
7 contends that its “statutory boundaries” entitle DWA to be the exclusive GSA and assume
8 absolute control and authority over all groundwater upon which Mission Springs relies in
9 performing its statutory duties.

10 187. Mission Springs requires a judicial determination regarding the parties’ rights,
11 duties, powers and jurisdiction under SGMA and other applicable laws.

12 188. A judicial resolution of this controversy is necessary and appropriate, such that the
13 Court should define the respective duties, authority and powers of DWA and Mission Springs in
14 managing groundwater within and underlying Mission Springs’ jurisdictional boundaries, as set
15 forth herein.

16 189. Mission Springs has been and will be irreparably harmed and prejudiced by the
17 actions of DWA in that DWA’s claim of exclusive authority over groundwater management in
18 the Mission Creek, Garnet Hills and Indio Sub-Basins interferes with and deprives Mission
19 Springs of its ability to exercise its statutory rights and authority with respect to groundwater
20 within its boundaries.

21 190. Mission Springs is informed and believes, and thereon alleges, that the decision of
22 the DWA Board in adopting DWA Resolution No. 1123 and the action of its staff in filing the
23 DWA Notice of Election are final, and that DWA contemplates no further action that could be
24 preempted by premature judicial review.

SIXTH CAUSE OF ACTION

Declaratory Relief - 2004 Settlement Agreement

(Against DWA, CVWD and Does 26-50, inclusive)

191. Mission Springs re-alleges and incorporates herein by reference, each and every allegation set forth in Paragraphs 1 through 119, inclusive, of this Petition and Complaint.

192. An actual controversy has arisen and now exists between the parties regarding their respective rights, duties and obligations under the 2004 Settlement Agreement.

193. Specifically, Mission Springs contends that DWA and CVWD breached the express terms of the 2004 Settlement Agreement which requires, *inter alia*, cooperative management of the Mission Creek Sub-Basin, Indio Sub-Basin, and Garnet Hill Sub-Basin, by:

(a) Failing to call quarterly Management Committee meetings, or any Management Committee meetings at which matters affecting the management of water resources in the Indio Sub-Basin were discussed;

(b) Failing to notify and allow Mission Springs to participate in the Indio Sub-Basin MOU or engage in the cooperative management of the Indio Sub-Basin;

(c) Excluding Mission Springs from in the preparation and submission of the Indio Sub-Basin Alternative Plan;

(d) Excluding Mission Springs from notice of or inclusion in any discussions or meetings in which the Indio Sub-Basin Alternative Plan and related decisions were made;

(e) Failing to identify Mission Springs as a stakeholder in the Indio Sub-Basin Alternative Plan Bridge Document, although a significant portion of Mission Springs' jurisdictional boundary overlies, and Mission Springs has customers and a number of active water production wells in, the Indio Sub-Basin; and

(f) Ignoring Mission Springs' requests to participate in the planning and preparation process for the Indio Sub-Basin Alternative Plan.

194. Mission Springs is informed that DWA and CVWD deny these contentions and have refused, and continue to refuse to allow Mission Springs' participation in and cooperative management of the Sub-Basins, including without limitation, the Indio Sub-Basin.

1 195. Moreover, Mission Springs contends that DWA further violated the express and
2 implied terms of the 2004 Settlement Agreement which require the parties to act reasonably, in
3 good faith, and in the spirit of cooperation by:

4 (a) Adopting DWA Resolution No. 1123 and filing its Notice of Election over area
5 within Mission Springs' Service Area, including the three square-mile area that is exclusively
6 within Mission Springs' jurisdiction; and

7 (b) Prohibiting Mission Springs from becoming the GSA within its jurisdiction and
8 then using that determination to purposefully exclude Mission Springs from cooperative
9 management within its Water Service Area and participation in the MOU covering the Indio Sub-
10 Basin.

11 196. Mission Springs is informed that DWA denies these contentions and believes it is
12 entitled to deliberately take actions to expressly exclude Mission Springs from control and
13 management of water, groundwater and water service within its jurisdictional boundaries.

14 197. Mission Springs requires a judicial determination regarding the parties' rights,
15 duties, and obligations pursuant to the 2004 Settlement Agreement.

16 198. A judicial declaration is necessary and appropriate at this time under the
17 circumstances in order that each of the parties may ascertain their rights, duties and liabilities as
18 pertaining to the foregoing.

19 **SEVENTH CAUSE OF ACTION**

20 **Injunctive Relief**

21 **(Against DWA and Does 1-25, inclusive)**

22 199. Mission Springs re-alleges and incorporates herein by reference, each and every
23 allegation set forth in Paragraphs 1 through 119, inclusive, of this Petition and Complaint.

24 200. Mission Springs seeks an injunction preventing DWA or its agents from exercising
25 any unilateral authority within Mission Springs, except pursuant to its limited authority to enter
26 into State Water contracts, import water and replenish the Mission Creek Sub-Basin, and assess
27 and levy replenishment assessments authorized by the DWA Law in connection with its water
28 importation and replenishment activities.

1 (b) to take no steps in furtherance of and make no decisions based on the Resolution and Notice
2 of Election; and (c) to take no action that interferes with Mission Springs' statutory rights and
3 jurisdiction as the exclusive water service provider within its Service Area.

4 2. That the Court grant Mission Springs' petition for writ of mandate and enter orders
5 directing DWR: to (a) reject as incomplete DWA's Notice of Election in its entirety, on the
6 grounds that the Notice failed to comply with the requirements of SGMA and DWR's Guidelines;
7 and (b) designate Mission Springs as the exclusive GSA over the portions of the Sub-Basins
8 within its Service Area boundaries. In the alternative, Mission Springs' seeks orders directing
9 DWR to reject DWA's Notice of Election as partially incomplete as to the portion seeking to
10 become a GSA over land within Mission Springs' exclusive jurisdiction, without approval from
11 or a coordination agreement with, Mission Springs, and designate Mission Springs as the
12 exclusive GSA over that area.

13 **As to the Second Cause of Action**

14 1. That the Court grant Mission Springs' petition for writ of mandate and issue a writ
15 directing DWA to: (a) vacate and set aside, or amend, DWA Resolution No. 1123 and withdraw
16 and/or amend, its Notice of Election as exclusive GSA within Mission Springs' boundaries, and
17 (b) take no steps and make no decisions based on the Resolution and Notice; and (c) compel
18 DWA to take no action that interferes with Mission Springs' statutory rights and jurisdiction as
19 the exclusive water service provider within its Service Area.

20 2. That the Court grant Mission Springs' petition for writ of mandate and enter orders
21 directing DWR: to (a) reject as incomplete DWA's Notice of Election in its entirety, on the
22 grounds that the Notice failed to comply with the requirements of SGMA and DWR's Guidelines;
23 and (b) designate Mission Springs as the exclusive GSA over the portions of the Sub-Basins
24 within its Service Area boundaries. In the alternative, Mission Springs' seeks orders directing
25 DWR to reject DWA's Notice of Election as partially incomplete as to the portion seeking to
26 become a GSA over land within Mission Springs' exclusive jurisdiction, without approval from
27 or a coordination agreement with, Mission Springs, and designate Mission Springs as the
28 exclusive GSA over that area.

1 As to the Third Cause of Action

2 1. For a finding that DWA and CVWD have breached and continue to breach the
3 terms of the 2004 Settlement Agreement by excluding Mission Springs from full and equal
4 participation in all groundwater management and control issues affecting Mission Springs'
5 statutory duties, and right to exercise control over the same;

6 2. For an order compelling DWA and CVWD to specifically perform the 2004
7 Settlement Agreement, and directing them to recognize Mission Springs as a GSA for all
8 purposes under SGMA, for the Mission Creek and Indio Sub-Basins, and within Mission Springs'
9 statutory boundaries, through a memorandum of understanding or other binding and enforceable
10 form of agreement, and provide for Mission Springs to have an equal voice in all matters
11 affecting the groundwater and groundwater management in and governance of the Mission Creek,
12 Garnet Hill, Indio, and San Gorgonio Pass Sub-Basins underlying Mission Springs' jurisdictional
13 boundaries.

14 3. For reasonable attorneys' fees pursuant to Section 10(b) of the 2004 Settlement
15 Agreement.

16 As to the Fourth Cause of Action

17 1. For a finding that DWA and CVWD breached the covenants of good faith and fair
18 dealing that are both express and inherent in the 2004 Settlement Agreement;

19 2. For an order compelling Defendants to recognize Mission Springs as a GSA for all
20 purposes under SGMA, for the Mission Creek and Indio Sub-Basins, and within Mission
21 Springs' statutory boundaries, through a memorandum of understanding or other binding and
22 enforceable form of agreement, and provide for Mission Springs to have an equal voice in all
23 matters affecting the groundwater and groundwater management in and governance of the
24 Mission Creek, Garnet Hill, Indio, and San Gorgonio Pass Sub-Basins underlying Mission
25 Springs' jurisdictional boundaries.

26 3. For a finding that DWA further breached the covenants of good faith and fair
27 dealing that are both express and inherent in the 2004 Settlement Agreement by adopting
28 Resolution No. 1123 and filing its Notice of Election over areas that fall exclusively within

1 Mission Springs' jurisdiction and prohibiting Mission Springs from becoming a GSA over its
2 own jurisdiction, and further using its improperly gained exclusive GSA designation to
3 purposely exclude Mission Springs from cooperative management of the groundwater within its
4 Service Area and participation in the MOU and Alternative Plan.

5 4. For an order compelling DWA to repeal and/or amend Resolution No. 1123 and
6 withdraw and/or amend its Notice of Election as to areas within Mission Springs' Service Area.

7 5. For reasonable attorneys' fees pursuant to Section 10(b) of the 2004 Settlement
8 Agreement.

9 **As to the Fifth Cause of Action**

10 1. For a judicial declaration:

11 a. That the DWA statutory boundary does not overlap with Mission Springs'
12 jurisdictional boundary except for the purpose of importing State Water for replenishment of the
13 Mission Creek Sub-Basin, and levying and collecting replenishment assessments in connection
14 therewith;

15 b. That, within the boundaries of Mission Springs, DWA's jurisdiction is
16 limited to that of a State Water contractor with statutory authority to import water, replenish the
17 Mission Creek Sub-Basin, and levy and collect replenishment assessments in connection
18 therewith.

19 c. That DWA is not an exclusive groundwater management authority with
20 exclusive authority to manage and control the groundwater in the basins underlying Mission
21 Springs, and DWA's claim of exclusivity under SGMA is invalid as an unlawful interference with
22 Mission Springs' power and authority within its own exclusive statutory service area.

23 d. That DWA's fundamental loyalty and commitment to its retail water
24 customers creates an irreconcilable and unlawful conflict of interest with respect to its assertion
25 of control over groundwater management affecting Mission Springs' retail service customers and
26 inhabitants, such that DWA may not exercise the powers and authority of an exclusive GSA
27 within Mission Springs' jurisdictional boundaries.

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1 e. That Mission Springs has exclusive jurisdiction over groundwater, wells,
2 well spacing, groundwater management, and the provision of water service, within its boundaries.

3 **As to the Sixth Cause of Action**

4 1. For a judicial declaration that DWA and CVWD breached the express terms of the
5 2004 Settlement Agreement which requires, *inter alia*, cooperative management of the Mission
6 Creek Sub-Basin, Indio Sub-Basin, and Garnet Hill Sub-Basin, by:

7 a. Failing to call quarterly Management Committee meetings, or any
8 Management Committee meetings at which matters affecting the management of water resources
9 in the Indio Sub-Basin were discussed;

10 b. Failing to notify and allow Mission Springs to participate in the Indio Sub-
11 Basin MOU or engage in the cooperative management of the Indio Sub-Basin;

12 c. Excluding Mission Springs from in the preparation and submission of the
13 Indio Sub-Basin Alternative Plan;

14 d. Excluding Mission Springs from notice of or inclusion in any discussions
15 or meetings in which the Indio Sub-Basin Alternative Plan and related decisions were made;

16 e. Failing to identify Mission Springs as a stakeholder in the Indio Sub-Basin
17 Alternative Plan Bridge Document, although a significant portion of Mission Springs'
18 jurisdictional boundary overlies, and Mission Springs has customers and a number of active water
19 production wells in, the Indio Sub-Basin; and

20 f. Ignoring and/or rejecting Mission Springs' requests to participate in the
21 planning and preparation process for the Indio Sub-Basin Alternative Plan; constitute a breach of
22 the 2004 Settlement Agreement.

23 2. For a judicial declaration that DWA further violated the express and implied terms
24 of the 2004 Settlement Agreement which requires the parties to act reasonably, in good faith, and
25 in the spirit of cooperation by:

26 a. Adopting DWA Resolution No. 1123 and filing its Notice of Election as
27 the exclusive GSA over substantially all of Mission Springs' Water Service Area, including those
28 areas that are exclusively within Mission Springs' jurisdiction; and

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Dated: June 14, 2018

SLOVAK BARON EMPEY MURPHY & PINKNEY LLP

By: 

John O. Pinkney
Shaun M. Murphy
Marguerite P. Battersby
Katelyn K. Empey
Attorneys for Petitioner/Plaintiff
MISSION SPRINGS WATER DISTRICT

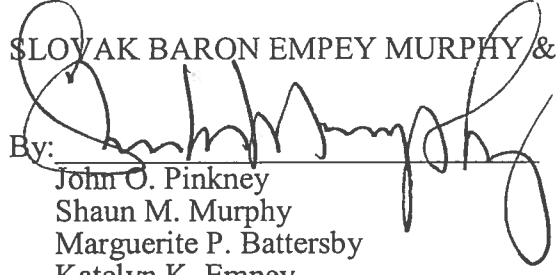
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DEMAND FOR JURY TRIAL

Petitioner/Plaintiff Mission Springs Water District hereby demands a trial by jury on all claims.

Dated: June 14, 2018

SLOVAK BARON EMPEY MURPHY & PINKNEY LLP
By: 
John O. Pinkney
Shaun M. Murphy
Marguerite P. Battersby
Katelyn K. Empey
Attorneys for Petitioner/Plaintiff
MISSION SPRINGS WATER DISTRICT

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PROOF OF SERVICE
CCP §§ 1011, 1013, 1013a
STATE OF CALIFORNIA COUNTY OF RIVERSIDE

I, the undersigned, am employed in the County of Riverside, California, am over the age of 18 years and not a party to this lawsuit. My business address is 1800 East Tahquitz Canyon Way, Palm Springs, California 92262.

On June 14, 2018, I served or caused to be served the foregoing documents described as: **THIRD AMENDED PETITION FOR WRITS OF MANDATE AND/OR ADMINISTRATIVE MANDAMUS; COMPLAINT FOR BREACH OF CONTRACT (SPECIFIC PERFORMANCE) AND BREACH OF COVENANTS OF GOOD FAITH AND FAIR DEALING; COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF - DEEMED VERIFIED PURSUANT TO CCP § 446** on all interested parties in this action as follows:

SEE MAILING LIST ATTACHED

BY MAIL: I deposited such document in a sealed envelope with postage fully prepaid, in the mail at Palm Springs, California.

BY OVERNIGHT DELIVERY: I caused such document to be delivered overnight from Palm Springs, California, to the business address maintained by the above person(s) as last indicated by that person on a document that he or she has filed in the above-entitled cause and served on this party.

VIA ELECTRONIC MAIL: Service by electronic mail was made either pursuant to a Court Order, to an agreement between the parties permitting the same, or as a professional courtesy in addition to other proper service. The electronic mail was sent to an electronic mail address maintained by the person(s) on whom the document(s) is/are served as last given by that/those person(s). I personally requested a "read receipt" for this electronic mail message, and, unless disallowed by the recipient, received the same.

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

Executed on June 14, 2018 at Palm Springs, California.

Erika Garduno

MAILING LIST

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