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7 Save the El Dorado Canal

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF EL DORADO

10)
11 SAVE THE EL DORADO CANAL,)

No. _____

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

v.

EL DORADO IRRIGATION DISTRICT;
EL DORADO IRRIGATION DISTRICT
BOARD OF DIRECTORS;
and DOES 1 to 20,

(Pub. Res. Code §21000, et seq.
[“CEQA”]; CCP §§ 1094.5, 1085)

Respondents

20 Petitioner Save the El Dorado Canal (“Petitioner”) petitions this Court for a Writ of
21 Mandate, directed to Respondent El Dorado Irrigation District (“EID” or “the District”).
22 Petitioner challenges the Respondent’s April 22, 2019, certification of the Final Environmental
23 Impact Report (“EIR”) and approval of the El Dorado Irrigation District Upper Main Ditch
24 Piping Project (“Project”). Petitioner alleges that the District’s approvals for the Project violate
25 the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et*
26 *seq.*, and the CEQA Guidelines, title 14, California Code of Regulations, section 15000 *et seq.*
27 Petitioner alleges as follows:
28

1 **PARTIES**

2 1. Petitioner Save the El Dorado Canal (“STEC”) is a grass-roots organization
3 established to promote quality local land use and development, as well as to preserve a healthy
4 human and natural environment in the area around the El Dorado Canal (also referred to as the
5 “Upper Main Ditch”). STEC and its members have a direct and substantial beneficial interest
6 in ensuring that EID complies with the laws relating to environmental protection. Members of
7 STEC live, work and recreate in El Dorado County and throughout the areas that will be
8 impacted by the Project. The interests of STEC will be harmed by the Project unless court
9 action is taken and Petitioner’s requested relief is granted.

10 2. Respondent Defendant El Dorado Irrigation District is an irrigation special district
11 organized and existing under the California Irrigation District Law (Water Code §20500, *et*
12 *seq.*) and authorizing statutes (Water Code §22975, *et seq.*). The District serves approximately
13 110,000 residents in northern California’s El Dorado County. The District provides irrigation
14 water, drinking water, recycled water, and wastewater treatment services, and operates a
15 hydroelectric power project. The District acted as the lead agency for the Upper Main Ditch
16 Piping Project, and Respondent El Dorado Irrigation District Board of Directors approved the
17 Project in that capacity, as indicated in the April 22, 2019 Notice of Determination for the
18 Project.

19 3. Petitioner is unaware of the true names and identities of DOES 1 through 20 and
20 21 through 40, inclusive, and sues such unnamed Respondents by their fictitious names.
21 Petitioner is informed and believe, and based thereon allege, that fictitiously named
22 Respondents also are responsible for all acts and omissions described herein. When the true
23 identities and capacities of Respondents have been determined, Petitioner will, with leave of
24 Court if necessary, amend this Petition to include such identities and capacities.

25 **JURISDICTION AND VENUE**

26 4. This Court has jurisdiction over the matters alleged in this Petition pursuant to
27 Code of Civil Procedure section 1085, and Public Resources Code section 21168.5. In the
28 alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and

1 Public Resources Code section 21168. The Court has jurisdiction to issue declaratory relief
2 pursuant to Code of Civil Procedure section 1060 and injunctive relief pursuant to Code of
3 Civil Procedure section 525 *et seq.*

4 5. Venue for this action properly lies in the Superior Court for the State of California
5 in and for the County of El Dorado pursuant to sections 393, 394 and 395 of the Code of Civil
6 Procedure.

7 **BACKGROUND FACTS**

8 6. EID is a public water agency located in El Dorado County, and the District's
9 system contains more than 1,250 miles of pipe, 27 miles of ditches, five water treatment plants,
10 and 37 storage tanks and/or reservoirs. The Project proposes to convert the existing "Upper
11 Main Ditch" from an open and unlined conveyance to an underground raw water transmission
12 pipeline. The existing ditch is approximately 14- to 20-foot wide, including the berm, and up to
13 five feet in depth and delivers a maximum of 15,080 acre-feet annually (afa) of raw water
14 supplies from the El Dorado Forebay Reservoir (Forebay) near the community of Pollock
15 Pines to the District's Reservoir 1 water treatment plant (a distance of approximately three
16 miles) where it is then treated and distributed throughout the District's public drinking water
17 system.

18 7. The Upper Main Ditch passes through private property. The District has
19 easements across these private properties for the purpose of owning and operating the ditch as
20 part of its water supply system. A four- to five-foot wide path runs atop the outer ditch berm
21 for District maintenance purposes, and members of the public utilize this bench for recreational
22 purposes. The Upper Main Ditch typically conveys raw water supplies during the spring and
23 summer months, and is shut down for varying periods of time in the fall and winter months for
24 maintenance.

25 8. The District asserts that because the Upper Main Ditch is unlined and uncovered,
26 a portion of the water conveyed through the ditch is lost to seepage and evapotranspiration.
27 The District also has identified the objective of improving water quality by piping the water
28 that now flows in the Upper Main Ditch.

1 9. The project alternative approved by the District Board is the “Blair Road
2 Alternative.” The Project involves installation of an underground pipeline beginning at the
3 District’s Forebay Valve House and across District property to Blair Road. The pipeline will be
4 installed within the Blair Road right of way for approximately 8,200 feet and then within the
5 existing ditch for approximately 1,500 feet, then approximately 2,200 feet across private
6 property to the Reservoir 1 Water Treatment Plant.

7 10. The District will be required to obtain new easements across private parcels to
8 provide the District with the right to install, maintain, and operate the pipeline.

9 11. The Blair Road alternative will require the removal of approximately 145 trees.

10 12. The Blair Road alternative will require that the pipeline cross under Blair Bridge.

11 13. The Draft EIR for the Project states that “[t]he transition between the non-
12 constructed sections of the ditch and constructed sections of the ditch would leave a graded
13 slope in place to allow normal gravity flow of stormwater within the channel to be conveyed as
14 under the current (No Project) conditions.

15 14. The Upper Main Ditch is part of an irrigation ditch system known as the Main
16 Ditch. The Main Ditch is divided into 3 major reaches known as the Upper Main Ditch, the
17 Middle Main Ditch and the Lower Main Ditch. The District abandoned most of the Middle
18 Main Ditch and the Lower Main Ditch in approximately 2005.

19 15. The District’s records indicate that the abandonment was “part of a larger District-
20 wide conservation strategy to eliminate, where possible, delivery of water in open earthen
21 ditches susceptible to high rates of seepage and evapotranspiration.”

22 16. The District’s records also state that the Upper Main Ditch is approximately 3
23 miles in length and carries water diverted from Forebay Reservoir and also “intercepts
24 approximately 378 acres of the Long Canyon and Iowa Canyon watersheds.”

25 17. Since EID abandoned the Middle Main Ditch and Lower Main Ditch, storm water
26 conveyance has been compromised by accumulated vegetation and other debris in the
27 abandoned portions of the ditch.

1 18. The District’s own experts confirmed in a report during the Main Ditch
2 abandonment process that the Main Ditch system operates as the storm water collection system
3 for a large watershed. The ditch system completely disrupted the natural drainage, and the
4 District was warned that any changes to the system would require consideration of existing
5 drainage patterns and level of flood protection along the ditch.

6 19. The District has known since at least 2005 that the Main Ditch system had altered
7 the natural drainage in such a way that the entire system was serving to collect and convey
8 surface waters for a large watershed.

9 20. The District asserts that the “ditch would continue to have the capacity to
10 passively receive and convey stormwater flows during storm events. Except where the Blair
11 Road Alternative would be located within the existing ditch corridor, the District would no
12 longer use the existing ditch under this alternative. As such, the District’s existing easements
13 across private parcels to own and operate the unused portions of the ditch would revert to the
14 underlying property owners. The District would take appropriate future maintenance actions
15 within its pipeline easement rights to maintain the ditch as necessary to protect and maintain
16 District facilities.”

17 21. The District will abandon its easements to the Upper Main Ditch (other than the
18 areas where the new pipeline will exist within the old ditch), and the abandoned sections of the
19 Upper Main Ditch will be subject to being clogged with debris or filled in by property owners,
20 and so the statement that the Upper Main Ditch would continue to have the capacity to
21 “passively receive and convey stormwater flows” is without any basis in fact.

22 22. El Dorado County commented on the Draft EIR and stated as follows: “The
23 County believes that the Proposed Project and the Blair Road Alternative would reduce the
24 capacity of the ditch to convey surface runoff at historic levels. Runoff events larger than the
25 10-year design event would have the potential to trigger these potential impacts. The effects of
26 these changes should be analyzed in greater detail in the EIR.” The County asserted that a
27 more robust mitigation strategy is required. The District declined to respond to the County’s
28 requests for additional evaluation and development of mitigation measures.

1 23. On June 18, 2018, the District issued a Draft EIR for the Project. Petitioner and
2 many others submitted extensive comments on the Draft EIR. After a public meeting on June 27
3 2018, the District extended the review and comment period to September 18, 2018. The District
4 received approximately 200 comment letters/emails from approximately 90 individuals or
5 organizations during the comment period.

6 24. On January 9, 2019, the District staff met with El Dorado County staff to discuss
7 the County's significant concerns about the Project and the Draft EIR. In addition to the
8 County's concerns about the Project's destruction of stormwater collection and conveyance, and
9 the resulting damage that will occur, the County also raised concerns regarding impacts to oak
10 trees.

11 25. On January 14, 2019, the District Board of Directors formed a Main Ditch ad hoc
12 committee, consisting of Directors Dwyer and Osborne, for purposes of meeting with members
13 of the community regarding the Project.

14 26. On January 25, 2019, the District issued the Notice of Completion of the final EIR.
15 The final EIR provides documentation of the comments received on the draft EIR, the District's
16 responses to comments, text revisions to the draft EIR, additional information, and the
17 Mitigation Monitoring and Reporting Program.

18 27. The District's Main Ditch ad hoc committee met with representatives of STEC on
19 four occasions (March 11, March 19, March 25, and April 9, 2019) regarding the Project. By
20 agreement of the parties, the discussions at those meetings were subject to a confidentiality
21 agreement.

22 28. On April 22, 2019, the District held a public hearing on the Project, heard
23 presentations from staff, and heard public testimony. The District approved the Blair Road
24 Alternative of the Project and certified the EIR.

25 29. On April 22, 2019, the District filed a Notice of Determination as provided for in
26 Public Resources Code, section 21152.

27 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

AND INADEQUACY OF REMEDY

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2 30. Petitioner has performed any and all conditions precedent to filing the instant
3 action and has exhausted any and all available administrative remedies to the extent required
4 by law.

5 31. CEQA allows a petitioner who objected to a project to allege in a writ petition all
6 deficiencies asserted by others. (*Citizens for Clean Energy v. City of Woodland* (2014) 225
7 Cal.App.4th 173, 191.) Petitioner, other agencies, interested groups, and individuals made oral
8 and written comments on the Project, and raised each of the legal deficiencies asserted in this
9 Petition.

10 32. The District has taken final agency actions certifying the EIR and approving the
11 Project. The District has a mandatory duty to comply with all applicable laws, including, but
12 not limited to CEQA, prior to undertaking the discretionary approvals at issue in this lawsuit.
13 Petitioner possesses no effective remedy to challenge the approvals at issue in this action other
14 than by means of this lawsuit.

15 33. Petitioner has complied with the requirements of Public Resources Code, section
16 21167.5 by mailing written notice of this action to the District. A copy of this written notice
17 and proof of service are attached as Exhibit A to this Petition for Writ of Mandate.

18 34. Petitioner has complied with Public Resources Code section 21167.6 by
19 concurrently filing a request concerning preparation of the record of administrative
20 proceedings relating to this action. A copy of this request is attached hereto as Exhibit B.

21 35. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
22 unless this Court grants the requested writ of mandate to require the District to set aside their
23 approval of the Project and certification of the EIR. In the absence of such remedies, the
24 Districts' approval will remain in effect in violation of State law.

25 36. This action has been brought within 30 days of the filing of the Notice of
26 Determination as required by Public Resources Code section 21167(c).

1 **STANDING**

2 37. Petitioner has standing to assert the claims raised in this Petition because
3 Petitioner’s aesthetic, environmental and property interests are directly and adversely affected
4 by the District’s certification of the EIR and approval of the Project.

5 **ARBITRARY AND CAPRICIOUS ACTIONS**

6 38. Petitioner brings this action on the basis, among others, of Government Code
7 section 800, and other applicable laws, which award Petitioners’ attorneys’ fees in actions to
8 overturn agency decisions that are arbitrary and capricious, such as the decisions here in
9 question.

10 **PRIVATE ATTORNEY GENERAL DOCTRINE**

11 39. Petitioner brings this action as private attorneys general pursuant to Code of Civil
12 Procedure section 1021.5, and any other applicable legal theory, to enforce important rights
13 affecting the public interest. Issuance of the relief requested in this Petition will confer a
14 significant benefit on a large class of persons by ensuring that Respondent District does not
15 approve the Project in the absence of lawful environmental review and compliance with
16 applicable law.

17 **MANDATORY REQUIREMENTS OF CEQA**

18 40. CEQA prohibits local agencies from approving projects that may have adverse
19 environmental effects without first undergoing environmental review and avoiding or reducing
20 the significant environmental effects of those projects whenever feasible.

21 41. The EIR is an informational document that must disclose any potentially
22 significant environmental impacts of the project, and inform decision-makers and the general
23 public of mitigation measures and alternatives to the project that would avoid or substantially
24 lessen those impacts.

25 42. CEQA is designed to ensure that the public lead agency identifies all potentially
26 significant environmental impacts of a proposed project, adequately discloses those impacts to
27 the public, and implements all feasible alternatives or mitigation measures necessary to avoid
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1 or substantially lessen those impacts. (Pub. Resources Code §§ 21002, 21100; CEQA
2 Guidelines §§ 15126.6, 15370.)

3 43. It is improper for an EIR to defer its analysis or the formulation of mitigation
4 measures until after certification of the EIR and approval of the project, and mitigation
5 measures must be enforceable and contain specific performance standards.

6 44. The EIR must also evaluate any impacts of the project that may be “cumulatively
7 considerable,” and address the project's incremental effects when combined with the effects of
8 past, current, and probable future projects. (CEQA Guidelines §§15064(h)(l), 15130(a),
9 15355.)

10 45. When significant new information is added to a final EIR, CEQA requires that the
11 lead agency recirculate the EIR for additional public review and comment. (Pub. Resources
12 Code §21092.1; CEQA Guidelines §15088.5(a).)

13 46. A lead agency cannot certify an EIR and approve a project with significant
14 environmental effects unless the agency makes a series of detailed findings. These include
15 findings that changes or alterations have been required that mitigate or avoid the project’s
16 significant effects on the environment or that specific considerations render the mitigation
17 measures or alternatives “infeasible” but that the benefits of the project nonetheless outweigh
18 the project’s significant environmental effects. The lead agency’s findings must be supported
19 by substantial evidence in the administrative record. (Pub. Resources Code §21081; CEQA
20 Guidelines §§15091-15093.)

21 47. CEQA requires agencies to consider a “reasonable range of alternatives that will
22 foster informed decisionmaking and public participation.” (CEQA Guidelines § 15126.6 (a);
23 *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866,
24 885.)

25 48. Noncompliance with the requirements outlined above constitutes a prejudicial
26 abuse of discretion under sections 21168 and 21168.5 of the Public Resources Code, regardless
27 of whether a different outcome would have resulted if the lead agency had complied with those
28 requirements in the first place. (Pub. Resources Code §21005.) Abuse of discretion is

1 established if the agency has not proceeded in a manner required by law or, if the agency's
2 determination or decision is not supported by substantial evidence in the administrative record.
3 (Pub. Resources Code §§21168, 21168.5.)

4 49. Failure to include essential information in the EIR is a failure to proceed in the
5 manner required by law. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2
6 Cal.5th 918.)

7 50. Acting as the CEQA lead agency, the District had a mandatory duty to comply
8 with CEQA prior to approving the discretionary actions at issue in this lawsuit.

9 **FIRST CAUSE OF ACTION**

10 **Abuse of Discretion**

11 **Violation of CEQA, Public Resources Code, § 21000 et seq.**

12 51. Petitioner realleges and incorporates herein, as if set forth in full, each and every
13 allegation contained in paragraphs 1 through 50.

14 52. In approving the Project as described herein, EID prejudicially abused its
15 discretion in violation of CEQA pursuant to Public Resources Code section 21168 and Code of
16 Civil Procedure section 1094.5, because EID certified an EIR that fails to include information
17 necessary for informed decision making and informed public participation, including
18 information necessary to reach informed conclusions regarding the significance of the Project's
19 environmental impacts, the effectiveness of mitigation measures to avoid the Project's
20 significant environmental impacts, or feasibility of mitigation measures to reduce the Project's
21 significant environmental impacts; because the EIR fails to lawfully assess the Project's
22 cumulative effects; because the EIR fails to use the best available information and/or accepted
23 methodology for analyzing information; because the Final EIR fails to provide good faith
24 responses to comments on the Draft EIR; because EID failed and refused to provide a stable,
25 finite Project description by obscuring the fact that the Main Ditch system is functionally the
26 drainage system for a large watershed, and replaced the natural drainage system when the Main
27 Ditch was constructed. EID's Findings do not disclose this fact nor include any findings
28 regarding the fact that the only functional drainage system for collecting and conveying

1 stormwater will be abandoned and will not be maintained nor kept functional. With respect to
2 the findings required by CEQA, EID failed to make required findings, failed to support the
3 findings with substantial evidence, and failed to disclose the analytic route showing how the
4 evidence supports the findings.

5 53. Petitioner alleges that EID violated CEQA as detailed in a number of comment
6 letters submitted by Petitioner and others during the administrative review process. Petitioner
7 intends to prosecute all of the alleged violations of CEQA described herein and in the
8 documents submitted by Petitioner during the administrative review process. By way of
9 illustration, and without limitation, Petitioner alleges the following violations of CEQA by the
10 District:

11 **I. The EIR for the Project contains an inaccurate Project Description**

12 54. As set forth above, the EIR contains a project description that does not disclose
13 the fact that the District's plan to abandon the Upper Main Ditch and quitclaim its easement
14 rights to private property owners *will* result in the only existing stormwater collection and
15 conveyance system for the area becoming clogged and unable to drain floodwaters away.

16 55. The District asserts that it is not required to continue to maintain the ditch, but the
17 intentional acts of the District in abandoning the only stormwater drainage system in the area
18 will result in harm to neighbors through future flooding and other malfunctions. This is a
19 critical aspect of the Project description.

20 **II. The EIR's impacts analysis is insufficient**

21 **A. Impacts to recreation**

22 56. The Draft EIR for the Project includes an unsupported assumption that there is
23 "no right of public access" along the ditch. The DEIR goes on to qualify this statement as
24 follows: "However, a four- to five-foot side bench runs atop the outer ditch berm for District
25 maintenance purposes, and the District is informed that some members of the public utilize this
26 bench as a path."
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1 57. The public has been using the path along the ditch for recreational purposes for
2 decades, without challenge and without obtaining permission from the landowners, and has a
3 right to continue to do so.

4 58. In response to comments, the District continued to ignore this situation, claiming
5 that “the District is not aware of any legal document that grants or recognizes such public
6 access.” The trails along the District’s irrigation canals have been impliedly dedicated to the
7 public if they were used continuously for a period of five years anytime before 1972. (*Friends*
8 *of the Trails v. Blasius* (2000) 78 Cal.App. 4th 810.) The District must take into account the
9 public nature of the trail, and the recreational and aesthetic impacts of the Project.

10 59. The canal is a historic, scenic, and recreational resource in the community, and
11 the EIR fails to take any of this into account.

12 **B. Impacts to wetlands**

13 60. The California Department of Fish and Wildlife (“CDFW”) submitted comments
14 on the Draft EIR, and the District improperly ignored many of them. For example, with
15 respect to the requirement for a Streambed Alteration Agreement for the Project, CDFW stated
16 as follows:

17 Lake and Streambed Alteration

18 Page 32 of the project’s Initial Study states, “If either of the two pipeline alignments with portions located outside of the
19 Upper Main Ditch are chosen, then the District would acquire a Streambed Alteration Agreement (SAA) from the
20 California Department of Fish and Wildlife (CDFW) per Fish and Game Code, Section 1600 et. seq.” **Because the ditch is
21 hydrologically connected to natural streams, conveys some natural flow, and provides wildlife habitat and resources,
22 the Department strongly recommends that EID submit a Notification of Lake or Streambed Alteration prior to
beginning any activity subject to notification under FGC section 1602 et seq, regardless of the pipeline’s ultimate
alignment.** The jurisdictional delineation prepared for the U.S. Army Corps of Engineers (USACOE) for the project should
not be used to evaluate the project’s impacts to streambed and riparian habitat because the specific methods used by
the USACOE to delineate Waters of the U.S. (such as use of ordinary high water mark) often exclude fish and wildlife
resources that may be impacted by activities subject to notification under FGC section 1602.

23 61. The District’s response to the CDFW’s comment was that it is “acknowledged”
24 but then goes on to say that “the District has determined that no potentially jurisdictional
25 features would be affected under the Project.”

26 62. The District relied upon a delineation for jurisdictional waters that the CDFW said
27 should not be used because it did not contain reliable information.

1 63. Additionally, there are new State Wetland Guidelines¹ in place that the District
2 failed to address in the environmental analysis for the Project, and the Project will result in
3 impacts to adjacent wetlands. The EIR should have been revised to include analysis with the
4 new State Wetland Guidelines and recirculated for review by responsible agencies and the
5 public.

6 64. EID improperly refused to consult with CDFW despite the fact that CDFW
7 requested consultation. CDFW stated that the Draft EIR should be revised to identify the
8 perennial, intermittent, and ephemeral rivers, streams, and lakes within the Project footprint
9 and any associated fish and wildlife habitats, and to fully evaluate the foreseeable impacts and
10 include specific mitigation measures, and EID chose not to do so.

11 **C. Impacts to biological resources**

12 65. Many comments were submitted about the biological impacts of removing a water
13 source that has been flowing in the canal for over 150 years. The District responded in general
14 terms about the location of habitat, and also asserts that because of variable flow patterns, the
15 canal has not created any riparian or other habitat. The District also deferred to the Responsible
16 agency, concluding that there would not be a significant impact because it will be regulated by
17 CDFW through the 1602 process. (*Id.*) In response to CDFW, however, the District said that it
18 would not need to participate in the 1602 process and would not need a Streambed Alteration
19 Agreement. Under any of these scenarios, EID was required to analyze the impact and it was
20 improper to rely upon the possibility that another agency might become involved.

21 66. The Upper Main Ditch is hydrologically connected to natural watercourses.
22 Further, the Upper Main Ditch has been in place long enough to be treated under the law as a
23 natural watercourse.

24 67. The Upper Main Ditch supports riparian and other habitat that will be destroyed
25 as a result of the Project.

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27 _____
28 ¹ Adopted by the State Water Resources Control Board on April 2, 2019.

1 68. The EIR fails to adequately analyze tree mortality that will result from removing a
2 150-year old water supply. The EIR discusses only construction impacts but fails to evaluate
3 the long-term impacts of the Project on biological resources; the Project will have long-term
4 impacts on habitat for raptors and other birds, as well as other species. Also, the Project’s
5 impacts associated with tree mortality were not adequately addressed in the EIR.

6 69. The EIR fails to include any expert assessment of tree impacts beyond a cursory
7 “walk through”, but instead relies simply on a predicted number of trees that will be removed
8 as a result of the Project, with unsupported conclusions regarding the significance of this
9 impact.

10 70. CDFW also stated that the Draft EIR should be revised to include additional
11 analysis for foothill yellow-legged frog and raptors.

12 71. The EIR fails to adequately disclose, evaluate, and mitigate the Project’s
13 substantial adverse impact with respect to biological resources, and its conclusions are not
14 supported by substantial evidence.

15 **D. The Project increases the risks associated with wildfires**

16 72. The Draft EIR concludes that the Project will not increase risks associated with
17 wild fires since the Upper Main Ditch is not a “substantial water source” and because it is
18 drinking water and not a water supply to be used for fire suppression.

19 73. The underlying water rights do not make any difference when fire personnel are
20 protecting lives and structures. There is evidence from recent wild fire events that a portion of
21 the canal east of the Main Ditch protected lives and structures and was utilized by fire
22 personnel. This demonstrated the value of ditches and canals during wildfires. Ignoring the
23 facts results in a failure of the EIR to fulfill its informational purpose. It also results in a
24 failure to analyze the impacts and develop mitigation measures designed to protect the lives
25 and property of residents in the Project area.

26 74. County General Plan Policy 6.1.1.1 and Goal 6.2 requires that fire hazards be
27 minimized in both wildland and developed areas. Other provisions of the General Plan also
28 address public safety, and the Project is patently contrary to these General Plan policies and

1 provisions, as it will significantly undermine the ability of fire personnel to protect lives and
2 structures in the area.

3 **E. The Project will result in significant drainage impacts and**
4 **flooding risks**

5 75. The District's Main Ditch system replaced the natural drainage many years ago,
6 and now must function into the future as the drainage for a fairly large watershed. When the
7 County and STEC (along with others) raised this issue, the District responded in the Final EIR.
8 The District essentially claims that it cannot foresee whether or not the private landowners will
9 continue to maintain the abandoned ditch segments on EID's behalf, so the issue could be
10 ignored.

11 76. The District failed to identify any mitigation measures that could reduce the
12 impacts of abandoning the only functioning stormwater collection and conveyance facility in
13 the watershed.

14 **F. The EIR failed to adequately evaluate cumulative impacts**

15 77. The EIR failed to disclose and evaluate the cumulative impacts associated with
16 the District's activities in abandoning the other portions of the Main Ditch system, and
17 effectively destroying the only stormwater collection and conveyance system for the
18 watershed.

19 78. The EIR also failed to adequately analyze the cumulative impacts of the Project
20 together with the impacts of drought and bark beetle infestations on tree mortality. EID
21 acknowledges that there will be tree mortality impacts from the Project, but refused to analyze
22 this impact in the context of what is occurring in Northern California with respect to tree
23 mortality.

24 79. The EIR did not conduct an appropriate cumulative impact analysis. CEQA does
25 not allow an agency to avoid looking at an incremental contribution to a cumulative condition
26 simply because it determines the project impact will be less than significant. CEQA requires
27 consideration of the severity of existing environmental impacts because "the greater the
28 existing environmental problems are, the lower the threshold should be for treating a project's

1 contribution to cumulative impacts as significant.” (*Communities for a Better Environment v.*
2 *California Resources Agency* (2002) 103 Cal.App4th 98, 120.) The EIR’s failure to consider
3 the existing and foreseeable cumulative effects when assessing the Project’s incremental
4 contribution violates CEQA’s requirements.

5 **III. Other CEQA violations:**

6 80. Because EID improperly described the CEQA “project” without acknowledging
7 that it would alter stormwater drainage in the watershed, the public and decision makers were
8 mislead by the EIR.

9 81. EID inappropriately deferred the performance of necessary investigations, studies
10 or inquiry with respect to the development of mitigation measures and provided no
11 performance standards, criteria or specific guidance with respect to future studies used to
12 develop mitigation measures. Much of the deferral resulted from a reliance on the notion that
13 responsible agencies (such as CDFW) would conduct necessary analysis in the future, and
14 hopefully develop mitigation measures. This deferral violates CEQA.

15 82. The District failed to disclose and adequately describe the legal barriers that will
16 prevent the District from completing the Project as described in the EIR. The District does not
17 have easement rights that allow for the installation of a pipeline within the existing Upper Main
18 Ditch. The District also does not have a right to intentionally modify its operations in a way
19 that will damage property in the vicinity of the Project.

20 83. As a result of the District’s failure to comply with the procedures required by
21 CEQA and the CEQA Guidelines, a preemptory writ of mandate must issue ordering the
22 District to set aside its environmental findings and the related decision, and directing the
23 District to comply with the procedures mandated by CEQA and the CEQA Guidelines before
24 acting on any development proposal under the Project.

25 **PRAYER**

26 Wherefore, Petitioner respectfully requests the following relief and entry of judgment as
27 follows:

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1. For alternative and peremptory writs of mandate directing the District to vacate and set aside the certification of the EIR and approval of the Project and to withdraw the Notice of Determination for the Project;

2. For alternative and peremptory writs of mandate directing the District to comply with CEQA, the CEQA Guidelines, and to take any other action required by Public Resources Code section 21168.9 or as otherwise required by law;

3. For a stay and preliminary and permanent injunction restraining the District and its agents, employees, officers and representatives from undertaking any activity to implement the Project in any way pending full compliance with CEQA, the CEQA Guidelines, and the State Planning and Zoning Law;

4. For a declaration that the District’s actions in approving the Project violated CEQA as set forth above;


5. For Petitioner’s attorneys’ fees under Code of Civil Procedure section 1021.5 and other applicable authority;

6. Costs of suit; and

7. Such other and further relief as the Court deems just and proper.

DATED: May 20, 2019

LAW OFFICES OF MARSHA A. BURCH


By 
Marsha A. Burch
Attorney for Petitioner
Save the El Dorado Canal

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VERIFICATION

I am the attorney for Save the El Dorado Canal which is located outside the County of Nevada, State of California, where I have my office. For that reason, I make this verification for and on its behalf pursuant to the California Code of Civil Procedure section 446. I have read the foregoing Verified Petition for Writ of Mandate and know its contents. The matters stated in this Verified Petition for Writ of Mandate are true of my own knowledge except those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the above is true and correct. Executed this 20th day of May, 2019, at Grass Valley, California.



Marsha A. Burch