

1 Roy Ekland , SBN 247807
2 Marty Dunlap, SBN2366161
3 P.O. Box 6067
4 Chico, CA 95927
5 Tel: 530 345 4476
6 Fax: 530 345 3978
7 e-mail: roy@eklandlaw.com
8 e-mail: dunlaplegal@yahoo.com

9 Attorneys for Plaintiff/Petitioner

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF GLENN**

12 Case No. 07CV00538

13 BUTTE ENVIRONMENTAL COUNCIL,)
14 a California Non-Profit Corporation)
15)
16 Petitioner/Plaintiff,)
17 v.)
18 GLENN - COLUSA IRRIGATION)
19 DISTRICT)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONER'S NOTICE OF MOTION
AND MOTION FOR JUDICIAL NOTICE
AND TO AUGMENT THE RECORD**

20 Respondent/Defendants)
21)
22 Orland Unit Water Users Association)
23 Orland - Artois Water District)
24 Department of Water Resources)
25 U.S. Bureau of Reclamation)
26)
27 Real Parties in Interest.)
28)

DATE: May 22, 2008
TIME: 9:00 A.M.
COURTHOUSE: 1
JUDGE: Hon. Angus Saint-Evens

1 INTRODUCTION

2 1. Pursuant to the Public Resources Code § 21167.6, Respondent Glenn - Colusa
3 Irrigation District (Respondent) certified with the Court on February 15, 2008, a Record of
4 Proceedings. This document purports to be the administrative record in support of the
5 Respondent's decision to issue a Notice of Exemption (NOE) dated November 15, 2007.
6 Petitioner, Butte Environmental Council (Petitioner) has examined the Record as presented
7 and reviewed documents that were in Respondent's possession prior to the publication of
8 the Notice of Exemption. Petitioner finds that the Record as certified by the Respondent
9 is substantially incomplete and misleading. Petitioner respectfully requests this Court to
10 take judicial notice of its file in the matter of Butte Environmental Council v. Glenn-Colusa
11 Irrigation District I (Case No. 07CV00510) and to augment the Record to include the
12 documents appended hereto as Exhibit 1 to Exhibit 28, inclusive.

13 **STATEMENT OF FACTS**

14 2. On August 6, 2007, Respondent adopted a Notice of Exemption (NOE) under
15 the California Environmental Quality Act (CEQA) for a project that involved drilling of up to
16 seven production wells and an additional seven "test wells" in Glenn County (Exhibit A).

17 3. On September 15, 2007, Petitioner's Ececutive Director, Barbara Vlamis,
18 requested in writing via email all future communications that Respondent would generate
19 concerning the Glenn Colusa Integrated Water Resources Plan and its implementation
20 projects. The email asked if GCID would hold public meetings and requested to be placed
21 on the interested party list for all said future communication. (Exhibit B)

22 4. In its Petition for a Writ of Mandamus filed with this Court on September 19, 2007
23 (Case No. 07CV00510), Petitioner challenged the validity of the grounds upon which
24 Respondents asserted their claim of an exemption (GCID I). One month later, before any
25 of the substantive issues could be heard before the Court, Respondent rescinded the NOE,
26 informed Petitioner's attorneys that the matter was "moot" and asked for a stipulated
27 dismissal of the litigation (See Exhibit B).

1 5. On September 25, 2006, Respondent's General Manager, Thaddeus Bettner,
2 responded to Petitioner's above referenced email via email indicating that: "We do have
3 a groundwater Management Plan and Board policies in place for various issues. If you are
4 referring to the Lower Tuscan work, we will be having a public outreach and participation
5 process and I will make sure you are on the distribution list" (See Exhibit C).

6 6. Less than a month after rescinding the NOE, Respondent adopted a second
7 NOE during a board of directors meeting on November 15, 2007, for a nearly identical
8 project. The project subject to this NOE was entitled "Stony Creek Fan Conjunctive Water
9 Management Program" (SCF Program). As before, Respondent proposed to drill seven
10 production wells but now reduced the number of "test monitoring" holes to five. Petitioner
11 responded by filing a Petition for a Writ of Mandamus on December 17, 2007 (GCID II).
12 The parties failed to reach an agreement in the settlement conference of January 27, 2008.

13 7. On December 21, 2007, pursuant to Public Resources Code § 21167.6 attorneys
14 for Petitioner filed a "Notice of Request for Preparation of Administrative Record."
15 Subsequently, on January 23, 2008, Petitioner asserted its right to inspect specified
16 records that it believed that Respondent to hold at its offices under the California Public
17 Records Act (PRA) (Government Code § 6250, et. seq.). Respondent denied access to
18 these records, in violation of the PRA, until March 17, 2008 or later (Exhibit C). Petitioner
19 undertook a partial review of the relevant materials at Respondent's office on March 19,
20 2008.

21 8. Respondent sent Petitioner's attorneys an index of the proposed Administrative
22 Record on February 6 and proceeded to certify the Record with the Court on February 15,
23 2007. Beyond the Index, Petitioner had no opportunity to review the record prior to
24 certification. The Petitioner received the Record on or about February 20, 2008. The
25 Record totals 362 pages. Of these, 56 pages (15.4%) are replications. A single document,
26 the "Technical Memorandum No. 3: Land use, Water Demands and Supplies" published
27 by Davids Engineering accounts for sixty-five percent (236 pages) of the Record.

1 Seventy-eight percent of the "Technical Memorandum" (186 pages) consists of tables,
2 graphs and mathematical calculations. With the exception of the e-mail correspondence
3 in the opening 16 pages of the Record, Respondent ignored the request for specific
4 documents sought by Petitioner in the above referenced Notice filing of December 21,
5 2007.

6 **A. PETITIONER REQUESTS THAT THIS COURT TAKE JUDICIAL NOTICE OF ITS**
7 **OWN FILE IN BEC v. GCID I AND AUGMENT THE RECORD IN THIS MATTER BY**
8 **INCLUDING ALL OF THE DOCUMENTS FILED IN BEC v. GCID I**

9 9. Petitioner respectfully requests this Court to take judicial notice of its file in the
10 matter of Butte Environmental Council v. Glenn-Colusa Irrigation District I (Case No.
11 07CV00510), pursuant to Evidence Code § 452(d). As set forth above, Petitioner
12 requested that Respondent provide Petitioner all future communications that Respondent
13 would generate concerning the Glenn Colusa Integrated Water Resources Plan and its
14 implementation projects and asked if GCID would hold public meetings and requested to
15 be placed on the interested party list for all said future communication, in September 2007
16 (See Declaration of Barbara Vlamis, Exhibit 24). Respondent responded in September
17 2006 indicating that: "...If you are referring to the Lower Tuscan work, we will be having a
18 public outreach and participation process and I will make sure you are on the distribution
19 list." (See Exhibit 18 and Exhibit 24). Respondent apparently misplaced or forgot about
20 Petitioner's request, however. Petitioner did not receive notice of Respondent's above
21 referenced November 15, 2007 meeting, at which Respondent adopted an NOE for a
22 project almost identical to the one for which Respondent had adopted an NOE on August
23 6, 2007. Hence, Petitioner was unaware of the meeting Respondent held on November
24 15, 2007 and consequently Petitioner was deprived of the opportunity to participate and
thereby exhaust Petitioner's administrative remedies in this matter.

25 10. However, the projects for which Respondent adopted the first NOE and the
26 second NOE are almost identical to each other. Petitioner's petition in GCID I sets forth
27 asserts the same "fair argument" why Respondent abused its discretion in adopting the first

1 NOE as Petitioner sets forth in the case at bar: Respondent's "project," the Stony Creek
2 Fan (SCF) Program, is a component of a much larger program, not a project in and of
3 itself. Hence, this court should augment the administrative record in this manner in order
4 to include all of the documents filed in GCID I, in order to cure the defect of Respondent's
5 failure to properly notice the November 15, 2007.

6
7 **B. PETITIONER REQUESTS TO AUGMENT THE RECORD IN ORDER THAT**
8 **RESPONDENT'S SCF PROGRAM BE UNDERSTOOD FOR WHAT IT REALLY IS:**
9 **ONE OF A NUMBER OF PROJECTS WHICH COMPRISE A PROPOSED NORTHERN**
10 **SACRAMENTO VALLEY CONJUNCTIVE WATER USE PROGRAM, WHICH**
11 **PROPOSES TO INCORPORATE A GROUNDWATER BANK INTO THE STATE**
12 **WATER PROJECT AND CENTRAL VALLEY PROJECT WATER SUPPLIES**

13
14 **1. REQUEST TO AUGMENT THE RECORD: PROGRAM DOCUMENTS**
15 **GENERATED PRIOR TO RESPONDENT'S ADOPTION OF THE NOE**

16
17 11. The content of the Administrative Record under CEQA is governed by Public
18 Resources Code § 21167.6. Section 21167.6 (e) begins with an inclusive view of the
19 record. It states that the record "shall include" a list of 11 different items, but is "not limited
20 to" them. The list begins with "(1) All project application materials" and includes sub-
21 division (10) which states:

22
23 Any other written materials relevant to the respondent public agency's
24 compliance with this division or to its decision on the merits of the project,
25 including the *initial study*, any drafts of any environmental document, or
26 portions thereof, that have been released for public review, and *copies of*
27 *studies or other documents relied upon in any environmental document*
28 prepared for the project and either made available to the public during the
public review period or included in the respondent public agency's files on
the project, and all internal agency communications, including staff notes and
memoranda related to the project or to compliance with this division
(*emphasis added*).

12. In *County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, a case
similar to the case at bar, the court held that a "project" under CEQA constitutes the whole
of an activity, rather than the static development project which the agency has approved.
The court also held that the administrative record must include documents relating to the
agency's compliance with CEQA. The court went on to note that it is "the logic of [Public

1 Resources Code] section 21167.6 that there be a record of [project] modifications, not just
2 those documents relating only to the finished product” (*Id.* at p. 10).

3 13. Hence, in *County of Orange, supra*, the Court of Appeal ordered the trial
4 court to augment the record, by including an addendum to an EIR evaluating a project very
5 similar to a second project, which the agency subsequently approved, pursuant to a
6 subsequent EIR. (*Id.* at p. 14) The Court of Appeal observed that, when a trial court
7 excludes evidence from the lead agency’s files from the administrative record, such a ruling
8 transcends the realm of evidentiary rulings and substantively disposes of the procedures
9 under which the court will decide the case. (*Id.* at p. 11; See also Kostka & Zischke,
10 *Practice Under the Cal. Environmental Quality Act*, § 23.55, pp. 967-968.)

11 14. In this matter, Petitioner seeks to augment the record to include documents
12 which will show that the project which Respondent has concluded is exempt from CEQA
13 review is actually the second phase of a conjunctive water use program which proposes
14 to incorporate the aquifer underlying Butte, Glenn, Tehama, and Colusa counties into the
15 State Water Project and the Central Valley Project water supplies.

16 15. Public Resources Code § 21065 et. seq states that a “project” is “an activity
17 which may cause either a direct physical change in the environment, or a reasonably
18 foreseeable indirect physical change.” Based on the breadth of the statutory definition, the
19 courts have held that a “project” is the “whole of an action which has a potential for
20 resulting in a physical change in the environment, directly or ultimately, and includes the
21 activity which is being approved and which may be subject to several discretionary
22 approvals by governmental agencies.” (*Burbank-Glendale-Pasadena Airport Authority v.*
23 *Hensler* (1991) 233 Cal.App3d 577, 592, cited by *County of Orange, supra* at p. 9).

24 16. The documents that the Petitioner seeks to add to the Record before this
25 Court (Exhibits 1 to 23, inclusive) are precisely those programmatic records which define
26 the “whole of the action.” The documents specifically reference Respondent’s plans,

1 programs and activities to incorporate the groundwater in the Stony Creek Fan (SCF) area
2 into a program designed to improve Sacramento River Delta area water quality (Hereinafter
3 SCF Project). The Record of Proceedings references one of the underlying studies
4 (Record, p. 100, footnote 1, "Phase 8 of the Sacramento Valley Water Management
5 Program). However, the Record as certified does not contain this document or any of the
6 other documents which establish the programmatic context of the SCF Program. All of the
7 documents in the Exhibits noted above were written prior to Respondent's approval of the
8 NOE on November 15, 2007. Since 2001, Respondent has implemented numerous
9 activities as described in the documentation, all designed to create the foundation for the
10 current iteration of the SCF Program (See also Declaration of Marty Dunlap, Exhibit 26).

11 17. In its answer to the allegations that Petitioner filed with the Court on March
12 12, 2008, Respondent acknowledged that it "has worked with the Department of Water
13 Resources on development of the Sacramento Valley Water Management Agreement, the
14 Sacramento Valley Water Management Plan and the Sacramento Valley Integrated
15 Regional Water Management Plan" ("Joint Answer of Respondent Glenn-Colusa Irrigation
16 District and Real Party in Interest Orland Unit Water Users Association to Petition for Writ
17 of Mandamus and Administrative Mandamus," Case No. 07CV00538, ¶ 8, page 3.)
18 "Worked with..." belies the integral role that Respondent has played in the design and
19 implementation of the programmatic elements of each of these documents. The
20 documents reveal that Respondent has received millions of dollars in direct and indirect
21 funding from the Department of Water Resources (DWR) and the U.S. Bureau of
22 Reclamation (Bureau) to carry out specific activities under their supervision and
23 sponsorship. They delineate the scope and nature of the conjunctive use element of the
24 SCF Program. Each of the documents references Respondent's activities in the current
25 and future planning and implementation phases of the SCF Program. (See Exhibit 2,

1 “Sacramento Valley Water Management Agreement”; Exhibit 10, “Sacramento Valley
2 Water Management Plan,” and Exhibit 8, “Sacramento Valley Integrated Regional Water
3 Management Plan”; See also Declaration of Marty Dunlap, Exhibit 26). The documents
4 establish the parameters of the SCF Program and the context in which Respondent will
5 implement the activities outlined in the NOE. They are integral to the definition of the
6 “whole of the project” that CEQA requires.

7
8 **2. REQUEST TO AUGMENT THE RECORD:
9 CONTRACTS AND AGREEMENTS UNDERLYING THE PROJECT**

10 18. Respondent’s failure to include in the Administrative Record the contracts,
11 scope(s) of work, budgets, the planning and programmatic documents upon which the SCF
12 Program creates the impression that the “project,” pursuant to which Respondent adopted
13 the NOE represents an isolated research project, rather than the second phase of a
14 conjunctive water use program, as set forth above. Hence, the administrative record
15 Respondent has certified is incomplete, and misleading. These documents reveal the
16 inter-locking relationships between Respondent and the DWR, the Bureau and interest
17 groups such as the Natural Heritage Institute (NHI) that stretch back to 2001. They further
18 illustrate the extent to which the SCF Program involves the implementation of a linked
19 series of activities which have little to do with research and the generation of data and
20 everything to do with creating the essential infrastructure to incorporate the groundwater
21 resources of the Tuscan Aquifer into the State Water Project and Central Valley Project
22 water supplies.

23 19. The negotiation of the contracts with the agencies noted above generated
24 extensive commentary and communications between Respondent and the funding
25 agencies. These documents (Exhibits 13 through 17, inclusive; See also Declaration of
26 Roy Ekland, Exhibit 25), establish the programmatic and conceptual framework in which

1 Respondent carried out the antecedent programs and which govern the implementation
2 of the SCF Program. The documents set the time-frame in which Respondent is to
3 undertake implementation of the SCF Program and define the scope(s) of work for each
4 activity. They also reveal the level of funding and, more importantly, the utilization of funds
5 that the agencies provided to Respondent.

6 20. The Record that Respondent certified with the Court contains no reference
7 to the aforementioned contractual obligations. Oblique references to the *possibility* of a
8 rather vaguely described future conjunctive water use program appear on Page 2 and 3
9 of Exhibit A of the NOE (Page 0253 -254, Record of Proceedings) where Respondent
10 states that “For several years, the SCF Partners and other regional entities have *explored*
11 *the possibility* of enhancing conjunctive use of surface and groundwater to meet future
12 water demands....At some point in the future, although it is speculative at this time, water
13 supplies could also be made available on a voluntary basis to contribute to Statewide
14 supply....”¹ The text goes on to reference prior studies concerning “surface water recharge
15 and groundwater extraction” and then asserts that “the *logical next phase* of the study is
16 to develop test-production wells...” in the area (*emphasis added*). The use of the term
17 “logical next phase” establishes a clear relationship between the SCF Program and the
18 prior phases of the program. Respondent failed to include in the Record the body of
19 documentation that reveals and elucidates this relationship.

20 21. The network of contracts, correspondence and agreements with which
21 Petitioner proposes to augment the record will reveal that the conjunctive water use
22 program proposed is significantly more concrete than the above referenced statements in
23 the NOE indicate. The terms and conditions of the contracts fully elucidate the manner in
24

25 ¹ Of course, depending on where the groundwater which recharges the portion of the aquifer
26 depleted by the proposed extractions comes from, future groundwater contributions to the conjunctive
water use program may not be “voluntary.”

1 which the SCF Program incorporates the drilling of the seven production wells listed in the
2 NOE and the integration of the groundwater resources of Glenn County, and perhaps
3 several other counties, into a conjunctive water use program designed to export a
4 significant quantity of surface water southward from the Glenn County area and replace
5 that surface water with groundwater.

6 22. Respondent Apparently forgot about and excluded documents available in
7 its files corroborating these assertions from the Record. These documents reveal that
8 Respondent has moved well beyond the “possibility” of exploiting the groundwater
9 resources of the Tuscan Aquifer. It is no longer “speculative” that the Tuscan groundwater
10 could be “made available” for a Statewide redistribution program. The documents show
11 that Respondent’s project would create the infrastructure that the SCF Program would use
12 to export a significant quantity of water currently available for local use. Without ordering
13 these documents included in the Record, this Court will be deprived of the evidence
14 necessary to make an informed assessment of whether or not Respondent abused its
15 discretion in concluding that the SCF Program pursuant to which Respondent adopted the
16 NOE, was exempt from CEQA review.

17 **3. REQUEST TO AUGMENT THE RECORD:**
18 **THIRD PARTY DECLARATIONS AND DOCUMENTS**

19 23. Petitioner respectfully requests that the Court augment the Administrative
20 Record with documents developed and/or published by third parties (Exhibits 18 through
21 23, Exhibits 27 through 28, inclusive; See also Declaration of Marty Dunlap, Exhibit 26;
22 Declaration of Barbara Vlamis, Exhibit 24). Had Respondent not negligently denied
23 Petitioner a meaningful opportunity to participate in Respondent’s consideration of whether
24 or not the “project” was exempt from CEQA review, Petitioner would have submitted expert
25 testimony for Respondent’s consideration that would have informed Respondent that the
26 SCF Program could have a potentially significant adverse environmental impact.

1 Respondent states that there is a paucity of information concerning a number of issues
2 regarding recharge of the portion of the aquifer from which Respondent proposes to extract
3 a significant quantity of groundwater from the aquifer, known as the Tuscan Formation.
4 Respondent appears to be unaware of or to have forgotten about a number of public
5 documents which raise cautionary doubts.

6 24. The Davids Engineering "Technical Memorandum" (p. 0032, Record of
7 Proceedings) refers to the recharge of the (un-identified) aquifers arising from
8 Respondent's own operations. At the same time, the document notes that "further studies
9 are necessary," that "lateral inflows" of groundwater to the Lower Tuscan Formation had
10 not been quantified (p. 0065, Record of Proceedings) and that such lateral movements
11 (recharge) are little understood. "Exhibit A" of the NOE states that the potential for
12 "adverse impacts on the groundwater and surface water resources" of the area is
13 "incompletely understood at the present" (pp. 053 - 054, Record of Proceedings).

14 25. Respondent is remarkably poorly informed about the available documentation
15 regarding recharge of the Tuscan Aquifer and similar formations. The documents that
16 Petitioner seeks to enter into the Administrative Record address the issue of the location
17 of the recharge zone of the Tuscan Aquifer (Exhibits 1;22; 23; 27; 28; See also Declaration
18 of Marty Dunlap, Exhibit 26). The studies unanimously concur that the principal recharge
19 zone for the Tuscan Formation lies on the eastern edge of the Sacramento Valley in Butte,
20 Tehama and Sutter Counties. The recharge zone is the area of the aquifer most
21 susceptible to potential adverse environmental impact from the activities of the SCF
22 Program. By concluding that there is no possibility that the "project" will have a significant
23 environmental impact, Respondent demonstrates a lack of knowledge of significant
24 evidence which indicates that its SCF Program may have significant impacts on those of
25 its neighbors to the east and north who are dependent on groundwater for domestic use

1 and to grow crops. Indeed, Respondent ignores the possibility of significant impacts to an
2 area which has already experienced groundwater shortages, immediately subsequent to
3 large scale extractions similar to that proposed in the SCF Program.

4 26. Petitioner acknowledges that CEQA Guidelines 15061 and 15062 give the
5 agency wide latitude in seeking public input and in publicizing a Notice of Exemption.
6 Nevertheless, the courts have held that an agency can not shut its eyes to the potentially
7 significant and cumulative effects of its action. The court in *East Peninsula Education*
8 *Council, Inc. v. Palos Verdes Peninsula Unified School District* (1989) 210 Cal.App. 3d 155,
9 173 noted that

10 We recognize that our interpretation of [Public Resources Code] section 21080.18
11 leads to a situation where the amount of analysis and study involved at the
12 preliminary review stage of determination of whether a project is exempt from CEQA
13 may be similar to that involved at the second stage where the agency conducts an
14 initial study to determine whether the project has a significant effect on the
15 environment (Guidelines, 15002(k)).

16 The *East Peninsula* court quoted with approval the conclusion the court in *Dehne v. County*
17 *of Santa Clara* (1981) 115 Cal.App.3d 827, 843 that it “would be an exaltation of form over
18 substance to grant [a categorical] exemption because of mere technical compliance with
19 prescribed criteria.”

20 27. The facts of the instant case appear to reveal a significant oversight by
21 Respondent, resulting in circumstances that precluded any comment by Petitioner on the
22 SCF Program, at Respondent’s meeting, prior to Respondent’s approval of the NOE on
23 November 15, 2007. Petitioner had already set forth concerns about the Project’s possible
24 impact on the Tuscan Aquifer and especially the recharge area on the east side of the
25 Sacramento Valley in the complaint and petition that it had filed with this Court in
26 September 2007. As set forth above, Petitioner requested that Respondent provide
27 Petitioner all future communications that Respondent would generate concerning the
28 Glenn Colusa Integrated Water Resources Plan and its implementation projects and asked

1 if GCID would hold public meetings and requested to be placed on the interested party list
2 for all said future communication, in September 2007 (Exhibit18; See Declaration of
3 Barbara Vlamis, Exhibit 24). Respondent responded in September 2006 indicating that:
4 "...If you are referring to the Lower Tuscan work, we will be having a public outreach and
5 participation process and I will make sure you are on the distribution list." (Exhibit 18; See
6 Declaration of Barbara Vlamis, Exhibit 24). In response to the Petition filed in GCID I,
7 Respondent rescinded its first NOE. A month before approving the second NOE, it
8 assured Petitioner that with its rescission made the lawsuit was "moot." (Exhibit 25; See
9 Declaration by Roy Ekland). Respondent never informed Petitioner that it would reconsider
10 an NOE for substantially the same project. Although Respondent may have published an
11 Agenda for the meeting of the Board of Directors on November 15, 2007, it made no
12 attempt to notify Petitioner, a declared interested party, or to solicit any comments from
13 Petitioner concerning its consideration of the pending NOE.

14 28. Had Respondent informed Petitioner, a declared interested party, in advance
15 of its consideration of the NOE that is the subject of this litigation or solicited comments
16 from Petitioner, Petitioner would have provided a detailed account of the potential adverse
17 environmental impacts of the SCF Program. Further, it would have made available to the
18 Respondent Board and membership the aforementioned relevant commentary and
19 observations by qualified experts. Petitioner requests that the Court allow into the Record
20 the experts' comments and observations (Exhibits 20 through 21) that Respondent was
21 apparently unaware of when it adopted the second NOE on November 15, 2007.

22 **CONCLUSION**

23 29. Petitioner's request to augment the Administrative Record certified by
24 Respondent on February 15, 2008, is consistent with the fundamental purpose of CEQA,
25 which is to provide an opportunity for members of the public to comment on and discuss
26

1 proposed projects with lead agencies, so that lead agencies can make fully informed
2 decisions concerning the potential for proposed projects to impose significant impacts on
3 the environment. Respondent has presented to the Court a Record that is misleading, in
4 that it crates the impression that the SCF Program is speculative, rather than a well-defined
5 program of Statewide significance, pursuant to which Respondent has already made a
6 number of contractual commitments, in exchange for a commitment of millions of dollars
7 from other public agencies. The documents with which Petitioner seeks to augment the
8 Record establish the programmatic context of the Project, and will allow the Court to make
9 an informed decision through a consideration of the totality of the circumstances relevant
10 thereto. Respectfully submitted,

11
12 Roy Ekland and Marty Dunlap, Attorneys at Law

13
14 By: _____

15 Roy Ekland

16 Attorney for the Petitioner

17
18 Dated: April 7, 2008