

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 13 2017

V. LOPEZ

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Coachella Valley Association of Governments, a Joint Powers Authority,
et al.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

James Cato Ferguson

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Riverside Superior Court
3255 E. Tahquitz Canyon Way
Palm Springs, CA 92262

CASE NUMBER:
(Número del Caso):

PSC

1705629

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James Cato Ferguson, Esq., 73200 El Paseo, Suite 2D, Palm Desert, CA 92260; 760-831-1234

DATE:
(Fecha)

OCT 13 2017

Clerk, by
(Secretario)

V. LOPEZ

, Deputy
(Adjunto)

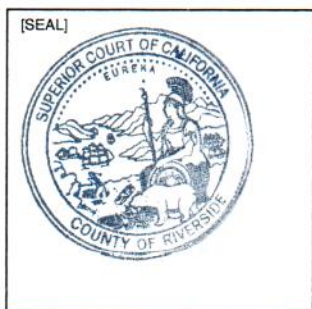
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

☐ **BANNING** 311 E. Ramsey St., Banning, CA 92220
☐ **BLYTHE** 265 N. Broadway, Blythe, CA 92225
☐ **HEMET** 880 N. State St., Hemet, CA 92543
☐ **MORENO VALLEY** 13800 Heacock St., Ste. D201,
 Moreno Valley, CA 92553

☐ **MURRIETA** 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563
☒ **PALM SPRINGS** 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262
☐ **RIVERSIDE** 4050 Main St., Riverside, CA 92501
☐ **TEMECULA** 41002 County Center Dr., #100, Temecula, CA 92591

RI-030

<p><small>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address)</small> James Cato Ferguson, Esq. (SBN 168977) FERGUSON LAW FIRM 73200 El Paseo, Suite 2D Palm Desert, CA 92260</p> <p>TELEPHONE NO: 760-831-1234 FAX NO. (Optional): _____</p> <p>E-MAIL ADDRESS (Optional): jim@govlaw.com</p> <p>ATTORNEY FOR (Name): In Pro Per</p>	<p align="center"><small>FOR COURT USE ONLY</small></p> <div style="text-align: center; font-size: 1.2em; font-weight: bold; margin: 10px 0;">FILED</div> <p align="center"><small>SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE</small></p> <p align="center" style="font-size: 1.1em;">OCT 13 2017</p> <p align="center" style="font-size: 1.1em;">V. LOPEZ</p> <hr style="border: 0.5px solid black; margin: 5px 0;"/> <p>CASE NUMBER: PSC 1705629</p>
<p>PLAINTIFF/PETITIONER: James Cato Ferguson</p> <p>DEFENDANT/RESPONDENT: Coachella Valley Association of Governments, et al.</p>	
<p>CERTIFICATE OF COUNSEL</p>	

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

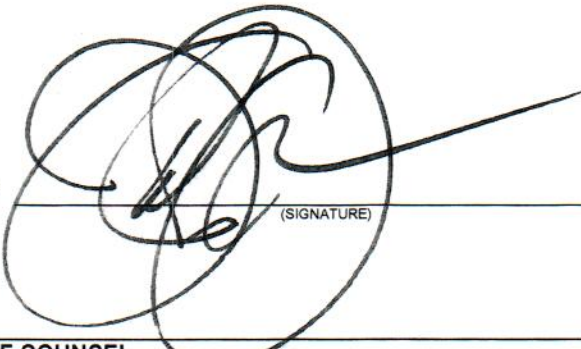
- ☒ The action arose in the zip code of: 92260
- ☐ The action concerns real property located in the zip code of: _____
- ☐ The Defendant resides in the zip code of: _____

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 1.0015 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date October 13, 2017

James Cato Ferguson, Esq.
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY MAKING DECLARATION)


 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James Cato Ferguson, Esq. (SBN 168977) FERGUSON LAW FIRM 73200 El Paseo, Suite 2D Palm Desert, CA 92260 TELEPHONE NO.: 760-831-1234 FAX NO.: ATTORNEY FOR (Name): jim@govlaw.com		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE <div style="font-size: 1.2em; margin: 5px 0;">OCT 13 2017</div> <div style="font-size: 1.2em; margin: 5px 0;">V. LOPEZ</div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 3255 E. Tahquitz Canyon Way MAILING ADDRESS: Same CITY AND ZIP CODE: Palm Springs, 92262 BRANCH NAME: Palm Springs		CASE NUMBER: PSC 1705629 JUDGE: DEPT:	
CASE NAME: Ferguson v. Coachella Valley Association of Governments, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **4**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **10-13-17**
James Cato Ferguson, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

James Cato Ferguson, Esq. (SBN 168977)
FERGUSON LAW FIRM
73200 El Paseo, Suite 2-D
Palm Desert, CA 92260
Telephone: (760) 831-1234
Email: Jim@govlaw.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 13 2017

V. LOPEZ

Plaintiff/Petitioner In Pro Per

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE,

JAMES CATO FERGUSON,

Plaintiff/Petitioner,

vs.

COACHELLA VALLEY ASSOCIATION OF
GOVERNMENTS, a Joint Powers Authority;
RIVERSIDE COUNTY
TRANSPORTATION COMMISSION, a
Public Agency; SOUTH COAST AIR
QUALITY MANAGEMENT DISTRICT, a
Public Agency; and DOES 1 through 100,
inclusive,

Defendants/Respondents.

CASE NO: PSC 1705629

PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF AND
EXHIBITS A - O IN SUPPORT THEREOF

Action filed:

DATE: JAN 12 2018
TIME: 830AM
DEPT.: PSI
JUDGE:

I. EPILOGUE

This taxpayer action is being taken to expose a complex, deceptive and often punitive scheme to fund a 48 mile concrete edifice with virtually no public purpose or benefit at a projected cost of \$100 million. The plan was contrived by a handful of individuals and its implementation is being undertaken by the above named public entities illegally tapping into various sources of public funds, including millions of taxpayer dollars. Incredibly, the perpetrators of this scheme, members of these public entities, the overseers of disbursement of these public funds, their lawyers and law firms are, in varying degrees, *the same people!*

Judicial relief is hereby being sought to evaluate this scheme, in light of controlling state, county and local law, and declarations of relief are being prayed for to assure the proper functioning of governance and the responsible, thoughtful and truly beneficial expenditure of public money.

II. INTRODUCTION

1
2 1. This action seeks a judgment to restrain, prevent and permanently enjoin
3 Respondents/Defendants COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS,
4 RIVERSIDE COUNTY TRANSPORTATION COMMISSION, and SOUTH COAST AIR
5 QUALITY MANAGEMENT DISTRICT from making any illegal expenditures or making waste
6 of the special tax revenues and proceeds generated by Riverside County Ordinance No. 02-001,
7 "Riverside County Transportation Commission Transportation Expenditure Plan and Retail
8 Transaction and Use Tax Ordinance" (also known as Measure "A"), the revenues and proceeds
9 produced via the payment of Transportation Uniform Mitigation Fees ("TUMF") by private
10 developers and the grant monies produced by the AB 1318 emission-reduction grant program
11 related to the capital acquisition, planning, engineering, environmental review, approval and
12 right-of-way acquisition, design, construction, operation and maintenance pertaining to the
13 proposed ("CV Link Project.")
14
15

III. PARTIES

16
17 2. Petitioner/Plaintiff JAMES CATO FERGUSON ("FERGUSON") is, and was at all times
18 relevant, a "citizen resident" of Palm Desert, County of Riverside, California, which city is
19 within the territorial boundaries of the Coachella Valley Association of Governments ("CVAG"),
20 and has standing to sue under California Code of Civil Procedure Section 526a. Petitioner has
21 paid within the year preceding the filing of this petition, the Measure "A" half-cent sales tax
22 collected by retail businesses within the County of Riverside. FERGUSON is an individual who
23 resides in Riverside County at 74633 Moss Rose Drive, Palm Desert, Riverside County,
24 California 92260. Petitioner has no plain, speedy, or adequate legal remedy in the ordinary
25 course of law. Unless writ relief is granted, Petitioner will be injured because
26
27

1 Petitioner/Plaintiff's tax dollars and other public monies intended to protect him from toxic
2 emissions and improving the public roads he travels on a daily basis will continue to be spent
3 and wasted for purposes unrelated to emissions reduction and improving public roads. A writ of
4 mandate is necessary to restrain Respondents/Defendants from making any illegal expenditures
5 or making waste of the special tax revenues and proceeds generated by Measure A, TUMF and
6 the AB 1318 emission-reduction grant program related to the proposed CV Link Project. The
7 issues raised by this Petition present issues of widespread public interest, and resolution of the
8 issues raised in this Petition would streamline, and possibly eliminate, many similarly situated
9 cases and avoid a multiplicity of similar actions. Additionally, the issues raised in this Petition
10 involve interpretation of law and issues of first impression. Delay in adjudication of the issues
11 raised in this Petition would have an adverse impact on the public welfare.
12

13 3. Respondent/Defendant COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS
14 is a joint powers authority formed pursuant to the Joint Exercise of Powers Act ("Joint Powers
15 Act" or the "Act"), which is codified at Government Code Sections 6500-6536. The purpose of
16 the Joint Powers Act is to allow public agencies to agree via a joint powers agreement to
17 delegate to a Joint Powers Authority/Agency ("JPA") the authority to exercise a common power
18 on behalf of the JPA's members. The common power must be a power each member could
19 independently exercise or perform. Basically, a JPA provides the members with a mechanism to
20 have a separate entity exercise the members' existing common powers. (Gov't Code § 6507).
21 CVAG serves as a regional planning agency for its members, which include the cities of Blythe,
22 Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert,
23 Palm Springs and the County of Riverside. CVAG is governed by an Executive Committee
24 comprised of elected representatives of each member city and the five Supervisors of the
25
26
27

1 Riverside County Board of Supervisors. CVAG's main office is located in Riverside County at
2 73-710 Fred Waring Drive, Suite 200, Palm Desert, California 92260.

3 4. Respondent/Defendant RIVERSIDE COUNTY TRANSPORTATION COMMISSION
4 ("RCTC") is a public agency of the State of California formed under the County Transportation
5 Commission Act, which is set forth in California Public Utilities Code Sections 130000 *et seq.*
6 The thirty-four (34) members of RCTC are responsible for coordinating highway and transit
7 planning and identifying projects for state and federal funding, and engaging in all aspects of
8 regional-wide planning for Riverside County's mobility. The members of CVAG are also
9 members of RCTC. RCTC's offices are located in Riverside County at 4080 Lemon Street, Third
10 Floor, Riverside, California 92501.

12 5. Respondent/Defendant SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
13 ("SCAQMD") is a public agency created by the 1977 Lewis Air Quality Management Act, as set
14 forth in California Health and Safety Code Sections 40400 *et seq.* SCAQMD serves as the air
15 pollution control agency for all of Orange County and the urban portions of Los Angeles,
16 Riverside and San Bernardino counties. SCAQMD is governed by a Governing Board consisting
17 of thirteen members, ten (1) of whom are elected officials, and three (3) of whom are appointed
18 by the state. SCAQMD'S offices are located at 21865 Copley Drive, Diamond Bar, Los Angeles
19 County, California 91765.

21 6. Does 1 through 100 are persons or entities unknown to FERGUSON at this time who
22 may have some interest that may be affected, or that may be liable for this action sufficient to
23 render them necessary parties, or that may be agents, employees, officers, or principals of the
24 defendants/respondents named herein. FERGUSON will amend this petition to specifically
25 identify each such person or entity as a defendant/respondent and/or real party in interest, if and
26

1 when their identities become known.

2 **IV. STATEMENT OF THE CASE**

3 7. CVAG has spent a considerable amount of public monies toward the creation of the CV
4 Link Project¹ (often referred to as simply the "CV Link"), which, as approved by CVAG, is a
5 40± mile multi-modal transportation pathway providing access and connectivity for pedestrians,
6 bicyclists and low-speed electric vehicles, such as golf carts and neighborhood electric vehicles
7 ("NEVs"). The proposed pathway will extend from the City of Palm Springs to the City of
8 Coachella, excluding the City of Rancho Mirage and including only a small portion of the City
9 of Indian Wells at the terminus points located at its borders with Palm Desert and La Quinta. The
10 voters of Rancho Mirage and Indian Wells overwhelmingly rejected CV Link. According to the
11 CV Link Master Plan, the current estimate of construction cost is approximately \$100 million.

13 8. One of the primary legal concerns with CV Link pertains to its NEV component, which is
14 a vital and necessary component of CV Link. Since CVAG failed to adopt a NEV Transportation
15 Plan, pursuant to state law, which is necessary to implement the NEV component of CV Link,
16 CVAG's approval of the CV Link Master Plan is null and void. Furthermore, since the state law
17 that authorized the adoption of the NEV component of CV Link expired on January 1, 2017,
18 neither CVAG nor any of its members can now adopt any portion of the NEV component of CV
19 Link. Consequently, CVAG has disqualified itself from receiving the \$17.4 million emissions
20 reduction grant awarded to CVAG by SCAQMD for CV Link, since the invalid NEV component
21 was integral to CVAG's eligibility for the grant proceeds and the success of its grant proposal.
22 SCAQMD must therefore terminate its grant contract with CVAG and reallocate the \$17.4
23 million to eligible projects that would reduce emissions in the Coachella Valley, as it did with
24
25

26 ¹ CV Link was initially designed by the Desert Regional District and County Open Space Districts in 2009 as the
27 "Parkway 1e11" project.

1 the emission grant awarded to the City of Desert Hot Springs.

2 9. Another issue of concern pertains to CVAG's use of the proceeds of a special tax,
3 approved by the voters of Riverside County, known as Measure "A," to fund the operation,
4 maintenance, engineering, acquisition and construction of CV Link, contrary to the voters' intent
5 and the stated purpose of the special tax measure. CVAG's 2014/2015 budget states with respect
6 to CV Link:

7 "The Southern California Air Quality Management District has awarded CVAG \$17.4
8 million from the Sentinel Air Quality mitigation funds which will fund construction.
9 Further, additional funding of \$20.0 million has been committed from the CVAG
10 Transportation Fund and another \$10.0 million has been pledged by the Desert
11 Healthcare District."
12

13 (See, Exhibit A, CVAG's FY 2014/2015 Budget at page 5, emphasis added.)

14 10. Nonetheless, in this case, since a NEV Transportation Plan was not a legal construct of
15 any sort when voters approved Measure A in 1988 or when they voted to extend its term in 2002,
16 it was impossible for the voters to intend or even contemplate that the NEV component of CV
17 Link would someday become an authorized expenditure of Measure A funds. The state law that
18 allowed the members of CVAG, and hence CVAG, to create a NEV Transportation Plan was
19 signed into law in 2011 – 9 years after Measure A was presented to the voters for its 30 year
20 extension, and 23 years after Measure A was first approved by the voters. As such, it is
21 unreasonable to purport that the voters could have intended for CV Link to be a project eligible
22 for Measure A funding in either 1988 or 2002.
23

24 11. CVAG's decision to use Measure A funds also indicates that RCTC and CVAG have
25 concluded (contrary to state law) that CV Link qualifies as a project eligible for funding by the
26

1 Transportation Uniform Mitigation Fees program, which consist of the mitigation impact fees
2 paid primarily by the developers of mainly private development projects throughout most of
3 Riverside County.

4 12. In light of the foregoing, and in consideration of the additional facts and analysis
5 included herein: (i) CVAG and RCTC should be immediately restrained and permanently
6 enjoined from using, committing, allocating, reserving and/or spending any funds, revenues or
7 proceeds generated by Measure A or the TUMF program for purposes related to the proposed
8 CV Link Project; and (ii) SCAQMD should be immediately restrained and permanently enjoined
9 from spending any public funds, revenues or proceeds, related to the AB 1318 emission-
10 reduction grant program toward the construction of CV Link.
11

12 **V. GENERAL ALLEGATIONS**

13 **A. CVAG does not have the legal capability to implement the NEV Component** 14 **of the CV Link Project.** 15

16 13. Projects like CV Link, which include a NEV Transportation Plan as an integral
17 component, require the adoption of special enabling legislation, which permits communities to
18 adopt NEV Transportation Plans that permit the operation of NEVs on certain roadways. In the
19 absence of such legislation and a duly approved NEV Transportation Plan, NEVs are prohibited
20 from operating on any roadway with a speed limit in excess of thirty-five (35) miles per hour
21 (Veh. Code §21260(a)). CV Link without its NEV component is not a roadway since Section 530
22 of the California Vehicle Code defines “roadway” as “that portion of a highway improved,
23 designed, or ordinarily used for vehicular travel.” (Veh. Code §530).
24

25 14. A NEV is a non-carbon emissions vehicle that serves the same purpose as a standard
26 automobile, but is slower and smaller than a standard automobile. While a NEV is a low speed
27

1 electric vehicle, it is not a golf cart. NEVs are constructed and operated differently than golf
2 carts. The Vehicle Code defines a NEV as a vehicle that: (1) has four wheels; (2) can attain a
3 speed, in one (1) mile, of more than 20 miles per hour and not more than 25 miles per hour, on a
4 paved level surface; and (3) has a gross vehicle weight rating of less than 3,000 pounds. (Veh.
5 Code §385.5).

6 15. In 2011, the State Legislature adopted AB 61, which added Chapter 6.2 (commencing
7 with Section 1962) to Division 2.5 of the Streets and Highways Code, titled "Neighborhood
8 Electric Vehicle Transportation Plan for the County of Riverside." (See Exhibit B, former
9 Chapter 6.2). That legislation authorized Riverside County and any city in Riverside County to
10 establish a Neighborhood Electric Vehicle (NEV) transportation plan by adoption of an
11 ordinance or resolution by their respective legislative bodies. The stated intent of AB 61 was to
12 authorize the County of Riverside or any city in the County to establish a NEV Transportation
13 Plan to further the vision of creating sustainable development that reduces gasoline demand and
14 vehicle emissions by offering a cleaner, more economical means of local transportation within
15 the plan area.
16

17 16. Under the legislative scheme, the area covered in a NEV Transportation Plan adopted by
18 the County may include any streets and roads under the jurisdiction of Riverside County, or in
19 the case of a city-adopted NEV Transportation Plan, any streets and roads under the jurisdiction
20 of the respective city. Two (2) or more jurisdictions may also jointly adopt a NEV Transportation
21 Plan for all or a portion of the territory under their respective jurisdictions.
22

23 17. CVAG incorporates a proposed NEV Transportation Plan as a vital and necessary
24 component of CV Link. (See Exhibit C, NEV Transportation Plan). The proposed NEV
25 Transportation Plan was included as Volume 4 of the CV Link Master Plan.
26

1 18. Streets and Highways Code Section 1962.8 provides that Chapter 6.2 was to remain in
2 effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute
3 extended the date. Since the legislature did not adopt any extension of Chapter 6.2, it is deemed
4 repealed as of January 1, 2017.

5 19. Streets and Highways Code Section 1962.2, subparagraph (a) requires adoption of an
6 ordinance or resolution to establish and implement a NEV transportation plan. As further
7 discussed below, CVAG lacks the requisite authority to enact such an ordinance or resolution on
8 its own accord; it must instead rely upon the authority of its members as expressed in an
9 implementation agreement. Since none of the members of CVAG delegated to CVAG the
10 requisite authority to adopt such a resolution or ordinance and since none of the members of
11 CVAG adopted their own resolutions and/or ordinances authorizing the establishment and
12 implementation of a NEV transportation plan before the enabling legislation expired on January
13 1, 2017, CVAG lacks the legal authority to adopt and implement a NEV transportation plan,
14 which is a key component of CV Link.
15

16 20. CVAG's inability to implement the NEV component of CV Link is critical since the
17 NEV component is the foundation upon which CVAG claims it is permitted to use Measure A
18 special tax dollars and proceeds from the TUMF program to fund the operation, maintenance,
19 engineering, acquisition and construction of CV Link.
20

21 **B. CVAG Lacks Common Power Required to Adopt and Implement the NEV**
22 **Component of CV Link.**
23

24 21. Under the Joint Powers Act, CVAG is authorized to jointly exercise powers that are
25 common amongst its members via its joint powers agreement. (Gov't Code § 6507). The
26 purpose of the Act is to allow public agencies to agree to delegate to a JPA the authority to
27

1 exercise a common power on behalf of the JPA's members, which each member could
2 independently exercise or perform. In other words, the Act merely sets up a new procedure for
3 exercising the members' existing powers, by allowing them to delegate an existing power (they
4 all have in common) to a JPA to exercise on their collective behaves.

5 22. Pursuant to the Act, a JPA may only possess the common powers specified in a JPA's
6 joint powers agreement and it may exercise such powers only in the manner and according to the
7 method provided in the agreement. (Gov't Code § 6508). CVAG's amended and restated joint
8 powers agreement ("CVAG JPA", see Exhibit D, CVAG Amended and Restated JPA) provides
9 that when authorized pursuant to an implementation agreement, CVAG shall have the power to:
10 (a) administer jointly the common power of its members to manage and administer any
11 implementation agreement; (b) adopt rules, regulations, policies, bylaws and procedures
12 governing the operation of CVAG in accordance with an implementation agreement; (c) apply
13 for an appropriate grant or grants under any federal, state or local programs for assistance in
14 developing an implementation agreement program; (d) acquire, hold, and dispose of property by
15 eminent domain, lease, lease purchase or sale in accordance with the implementation agreement
16 and subject to the conditions therein; and (e) exercise any powers authorized by an
17 implementation agreement in furtherance of said agreement's purposes. (See CVAG JPA,
18 section 1.2.2, at pages 3-4, emphasis added).

21 23. Since its creation in 1973, CVAG has only approved two (2) implementation agreements:
22 (1) the "Implementation Agreement Authorizing the Coachella Valley Association of
23 Governments to Manage and Administer the Regional Transportation Program" was adopted on
24 or about June 26, 1989, to exercise the common powers to oversee and implement the TUMF
25 program up to and including the year 2010; and (2) the "Implementation Agreement Authorizing
26

1 the Coachella Valley Association of Governments to Implement, Manage and Administer the
2 Clean Energy Program” adopted on or about June 18, 2013, to exercise the common powers to
3 implement, manage and administer the SB 555 Clean Energy Program and/or the AB 811 Clean
4 Energy Program on behalf of the members of CVAG. Neither of these implementation
5 agreements provides that the establishment and implementation of a NEV transportation plan is a
6 common power amongst CVAG members.

7
8 24. As previously noted, CVAG members had the common power to independently adopt an
9 ordinance or resolution to adopt and implement a NEV Transportation Plan, which each member
10 could have delegated to CVAG for purposes of implementing the NEV component of CV Link,
11 when the NEV Transportation Plan enabling legislation (AB 61) was still in effect. Now,
12 however, since this common power no longer exists due to automatic expiration of AB 61 on
13 January 1, 2017, CVAG lacks the requisite legal authority to adopt and implement the NEV
14 component of CV Link.

15
16 **C. CV Link is Not Eligible to Receive Measure “A” Funds.**

17 25. Notwithstanding the fact that a critical element of CV Link is invalid, CVAG seeks to
18 fund a significant portion of CV Link using Measure A tax proceeds. However, as set forth
19 below, the project is not one that qualifies for the use of these “special tax” funds.

20 26. On November 8, 1988, the voters of Riverside County approved Measure A, which
21 provided for the imposition of a retail transaction and use tax for Riverside County at the rate of
22 one-half percent (0.5%) for a period of twenty (20) years.

23
24 27. On May 8, 2002, RCTC adopted Ordinance No. 02-001, the “Riverside County
25 Transportation Commission Transportation Expenditure Plan and Retail Transaction and Use
26 Tax Ordinance” (“Ordinance No. 02-001”) to continue Measure A for an additional thirty years,

1 subject to voter approval. (See Exhibit E, Ordinance No. 02-001).

2 28. Section V ("Purposes") of Ordinance No. 02-001 provides that the collected tax proceeds
3 could only be used for transportation purposes, including legal actions related thereto, the
4 "construction, capital, acquisition, maintenance, and operation of streets, roads, highways,
5 including state highways and public transit systems and for related purposes, including
6 expenditures for the planning, environmental reviews, engineering and design costs, and related
7 right-of-way acquisition." (See Ordinance No. 02-001, at page 2) .
8

9 29. Ordinance No. 02-001 was presented for voter approval at the November 5, 2002, general
10 election. Measure A was presented to the voters as a "special tax" measure since its revenues
11 were going to be used for specific purposes, and it was approved as a special tax by at least two-
12 thirds (2/3rds) of the Riverside County voters who voted on the Measure. The text of Measure A,
13 as set forth in the Sample Ballot, was presented to the voters as follows for the specific purposes
14 set forth therein:
15

16 **COUNTY - Measure A**

17 "To relieve traffic congestion, improve safety and air quality shall Measure A
18 (Riverside County Transportation Commission Ordinance No. 02-001) be approved to
19 extend for thirty (30) years the current ½ cent sales tax to:

- 20 • Widen/improve routes 10, 15, 71, 79, 86, 91, 111 and the 15/91
21 and 10/60 interchanges
- 22 • Maintain community streets
- 23 • Expand transit for seniors and persons with disabilities
- 24 • Expand Metrolink commuter rail
- 25 • Conduct independent financial audits and authorize bonds up to
26 \$500 million" (See Exhibit F, League of Women Voters of
27

30. The text of Measure A is straightforward and can be plainly understood as contemplating improvements to existing highways, maintaining streets, expanding transit for seniors and persons with disabilities, expanding rail service, conducting audits and authorizing bonds. Voters were not presented with the construction and maintenance of a new transportation corridor such as CV Link, which is neither explicitly mentioned nor implied by the ballot language.

31. The full text of Measure A is found at Exhibit A of Ordinance No. 02-001, which is titled "Riverside County Transportation Improvement Plan," and which serves as the County's Expenditure Plan. (See Exhibit E, Expenditure Plan², at page 2).

32. Under the Expenditure Plan heading "Taxpayer Accountability Safeguards" and the sub-heading "Legal Dedication of Funds," the Expenditure Plan expressly provides that Measure A funds may only be used for transportation purposes, including the construction, environmental mitigation of transportation projects, capital activities, acquisition, maintenance, and operation of streets, roads, highways, including state highways and public transit systems and for related purposes, which include, but are not limited to, expenditures for the planning, environmental reviews, engineering and design costs, related right-of-way acquisition, and construction, engineering and administration. (See Exhibit E, Expenditure Plan at page 3).

33. Under the Expenditure Plan heading "Goals and Objectives" and the sub-heading "Provide for Accountability in the Expenditure of Tax Payer Funds," the Expenditure Plan explicitly provides for "mandatory dedication of sales tax funds only for the transportation improvements and programs identified in the Expenditure Plan and no other purpose." (See Exhibit E, Expenditure Plan at page 1).

² Exhibit A of Ordinance No. 02-001 is hereinafter referred to as the "Expenditure Plan."

34. The Expenditure Plan identifies and authorizes specific projects to be developed in Western Riverside County, the Palo Verde Valley Area, and the Coachella Valley Area. (See Exhibit E, Expenditure Plan, pages 4-14). Under the Expenditure Plan heading “Specific Transportation Projects to be Funded – Coachella Valley Area,” and the sub-heading “State Highways and Major Regional Road Project,” the Expenditure Plan provides that “[f]ifty percent (50%) of the Measure ‘A’ revenues will be used for State Highways and *regional road* improvements. The Transportation Project Prioritization Study (TPPS)³, developed through the Coachella Valley Association of Governments (CVAG), will function as the Plan for future needs. Preventative maintenance of this Measure ‘A’ funded arterial will be allowed, if a majority of the Coachella Valley local governments give approval. The system improvements will be accomplished with a mix of Measure ‘A’ funds, state and federal highway funds, and the existing Transportation Uniform Mitigation Fee (TUMF) on new development. This segment of the Measure ‘A’ Expenditure Plan will be implemented through the Coachella Valley Association of Governments.” (See Exhibit E, Expenditure Plan at page 11, emphasis added).

35. While the phrases “regional road” and “regional roadway” are not defined in Ordinance No. 02-001 or in the Expenditure Plan, Section 527 of the California Vehicle Code defines “road” as follows: “Any existing vehicle route established *before January 1, 1979*, with significant evidence of prior regular travel by vehicles subject to registration pursuant to Article 1 ... of Chapter 1 of Division 3 [of the Vehicle Code].” (Veh. Code §527, emphasis added).

36. Clearly, no part of CV Link qualifies as a “road” under Section 527, since CV Link is not an “existing vehicle route established before January 1, 1979.” In other words, based on this Vehicle Code definition and the context of the use of the term, it is clear that the regional

³ CVAG’s Transportation Project Prioritization Study (“TPPS”), which identifies and prioritizes *regional roadway* projects, identifies CV Link as a regional transportation project, with a projected total project cost of \$99,400,000. (See Exhibit G, TPPS Table S-3).

1 roadways that are eligible for receipt of Measure A funds are those that were in existence as of
2 1979 – which excludes CV Link.

3 37. Further, in the Coachella Valley area portion of the Expenditure Plan (at pages 10-13),
4 there are no references to NEV projects, including the development and maintenance of NEV
5 paths, and there is no reference to the adoption of a NEV Transportation Plan. Plainly stated,
6 there is nothing in Measure A as presented to voters that foretold of new transportation corridor
7 projects such as the NEV transportation project for CV Link. There is absolutely no way the
8 voters could have intended for CV Link to be a project that would be eligible for receipt of
9 Measure A funding.
10

11 38. In contrast, the Western Riverside area portion of the Expenditure Plan clearly illustrates
12 that Measure A voters both contemplated and approved the development of new transportation
13 corridors to resolve Western Riverside County's future traffic congestion problems:

14 “State Routes 91 and 60 and Interstate Routes 15 and 215 cannot cost effectively
15 be widened enough to provide for the traffic expected as Riverside County
16 continues to grow. In addition to the specific highway improvements listed in
17 Section 1 above, congestion relief for these highways will require that new
18 north-south and east-west transportation corridors will have to be developed to
19 provide mobility within Riverside County and between Riverside County and its
20 neighboring Orange and San Bernardino Counties.” (Emphasis added).
21

22 (See Exhibit E, Expenditure Plan at page 6).
23

24 39. The Western Riverside County section illustrates quite plainly that the authors of
25 Measure A were well aware of how new transportation corridors could be utilized in resolving
26 Western Riverside County's traffic congestion problems. So aware, in fact, that they identified a
27

1 need in Western Riverside County, and authorized the use of Measure A funds to develop new
2 transportation corridors for purposes of relieving traffic congestion in Western Riverside County
3 only.

4 40. Clearly, the Expenditure Plan as currently stated does not permit the expenditure of
5 Measure A funds for the operation and maintenance of CV Link or for its engineering,
6 acquisition and construction expenses. The only remedy available to permit CV Link to qualify
7 for Measure A funds would be for RCTC to amend the Expenditure Plan to expressly authorize
8 the use of the funds for that purpose. Section XIV (Expenditure Plan Amendments) of
9 Ordinance No. 02-001 provides that the Expenditure Plan may only be amended in accordance
10 with Public Utilities Code Section 240302, as amended. Public Utilities Code Section 240302
11 currently provides that amendment of the Expenditure Plan would require: (a) the RCTC to
12 initiate the amendment, reciting findings of necessity, (b) the County Board of Supervisors to
13 approve the amendment, and (c) a majority of the cities constituting a majority of the
14 incorporated population to approve the amendment.
15

16
17 41. In light of the foregoing, CVAG cannot rely on the Expenditure Plan for the Coachella
18 Valley as legal authorization to expend Measure A funds for the operation and maintenance of
19 CV Link, nor for its engineering, acquisition and construction. Any such expenditure requires
20 RCTC amendment of the Expenditure Plan, following the process set forth at Public Utilities
21 Code Section 240302.
22

23 42. In the alternative, if CVAG wants to use Measure A funds to pay for any component of
24 CV Link, it clearly has the option of placing the question on a ballot which would require a two-
25 thirds (2/3rd) vote to pass. (Cal. Const., Art. XIII C, XIID). In the meantime, CVAG lacks the
26 legal authority to use, commit, allocate, reserve and/or spend any funds, revenues or proceeds
27

1 generated by Measure A for purposes related to the construction, maintenance, operation, capital
2 acquisition, planning, environmental review, engineering, design and right-of-way acquisition
3 pertaining to the proposed CV Link Project.

4 **D. CV Link is Not Eligible to Receive Funding from TUMF Program**

5 43. The TUMF program is a component of Measure A. On June 27, 2005, CVAG's General
6 Assembly approved a modification of the CVAG boundaries as well as the TUMF collection
7 boundary. As a result, CVAG updated the Transportation Project Prioritization Study and
8 conducted a Fee Schedule Nexus Study. Based on those documents, the Executive Committee
9 approved the new Fee Per Average Daily Trip for implementation on January 1, 2007.

10 44. TUMF applies only to new development yet to receive final discretionary approval and/or
11 issuance of a building permit or other development right and to any reconstruction or new use of
12 existing buildings that results in a change of use and generates additional vehicular trips. No
13 tract map, parcel map, conditional use permit, land use permit or other entitlement shall be
14 approved unless payment of the mitigation fee is a condition of approval for any such
15 entitlement.
16

17 45. The TUMF mitigation fees are imposed and collected by CVAG's member jurisdictions
18 and then transmitted to CVAG to be placed in the Coachella Valley Transportation Mitigation
19 Trust Fund, which is then administered by CVAG in trust for the members of CVAG.
20

21 46. The TUMF program charges a fee on new development "to assist with the building and
22 improvement of *regional arterials*." (See Ordinance No. 02-001 at page 2) "Regional arterials"
23 is parenthetically referred to in the Expenditure Plan for Western Riverside County as "major
24 local roadways." (See Expenditure Plan at page 7) While the word "roadway" is not defined at
25 Ordinance No. 02-001 or in the Expenditure Plan, Section 527 of the California Vehicle Code
26
27

1 defines "road" as follows: "Any existing vehicle route established *before January 1, 1979*, with
2 significant evidence of prior regular travel by vehicles subject to registration pursuant to Article
3 1 of Chapter 1 of Division 3 [of the Vehicle Code.]" (Veh. Code §527, emphasis added).
4 Clearly, no part of CV Link qualifies as a "road" under section 527, since CV Link is not an
5 "existing vehicle route established before January 1, 1979." In other words, based on this
6 Vehicle Code definition and the context of the use of the term, it is clear that the regional
7 roadways that are eligible for funding with TUMF proceeds are those that were in existence as of
8 1979 – which excludes CV Link.
9

10 **E. CV Link is not Eligible to Receive SCAQMD's AB 1318 Mitigation Fees**
11 **Fund**

12 47. In addition to planning on the receipt of funds from Measure A for CV Link, CVAG is
13 relying on its receipt of public grants to fund the construction and maintenance of CV Link,
14 including grant proceeds awarded by SCAQMD, which serves as the air pollution control agency
15 for Orange County and major portions of Los Angeles, San Bernardino, and Riverside counties.
16

17 48. On or about October 11, 2009, the Governor signed Assembly Bill 1318 (see Exhibit H,
18 Text of AB 1318), codified as Health & Safety Code Section 40440.14. Subdivision (e) of
19 section 40440.14 prohibited the Executive Officer of SCAQMD from transferring emission
20 reduction credits to an electrical generating facility such as the Competitive Power Venture's
21 Sentinel Power Plant ("Sentinel Plant") until the receipt of payment of mitigation fees.
22

23 49. In June 2011, the SCAQMD Governing Board ("Board") approved the establishment of
24 the AB 1318 Mitigation Fees Fund, a special revenue fund to finance emission reduction projects
25 pursuant to the requirements of AB 1318. The mitigation fees are for the transfer of emission
26 offsets from SCAQMD's internal offset accounts to CPV Sentinel, LLC, for the construction and
27

1 operation of the Sentinel Plant. The sum of \$53 million, all of which is from CPV Sentinel,
2 LLC, was placed in the AB 1318 Mitigation Fees Fund to be used to fund emission mitigation
3 projects.

4 50. On February 3, 2012, the Board approved the release of Request for Proposal ("RFP")
5 #P2012-17 to announce the availability of the AB 1318 Mitigation Fees Funds and to solicit
6 proposals for emission reduction projects in the Coachella Valley in order to meet the funding
7 requirements of AB 1318. (See Exhibit I, SCAQMD Board Report of February 3, 2012). The
8 stated purpose of the AB 1318 RFP was to solicit proposals for emission reduction projects
9 within the jurisdiction of SCAQMD. Again, this program was funded by emission-offset
10 mitigation funds provided by CPV Sentinel, LLC, for funding emission reduction projects
11 pursuant to AB 1318. The RFP explicitly provided that: "To qualify for this program, projects
12 must demonstrate real emission reductions." (See Exhibit I, SCAQMD Board Report at page 1,
13 emphasis added). Amongst the example of potential project areas that could qualify for funding
14 was "near-zero or zero emission vehicles" and "electric charging or CNG refueling stations."
15 (See Exhibit I at p. 1, emphasis added.) In light of the foregoing, SCAQMD was required to
16 ensure that at least thirty percent (30%) of the fees were used for emission reductions in areas
17 within close proximity to the Sentinel Plant in Desert Hot Springs, and at least thirty-percent
18 (30%) were used for emission reductions in designated "Environmental Justice Areas," as
19 defined at SCAQMD's Rule 1309.1
20
21

22 51. The RFP was formally released on February 9, 2012, and was open to any project in the
23 Coachella Valley that could demonstrate emission reductions.
24

25 52. A panel of three (3) air quality technical experts scored each proposal according to the
26 following criteria: (a) Experience and expertise of proposer – 30 points; (b) Aids in achievement
27

1 of SCAQMD's regional air quality goals in Coachella Valley – 30 points; (c) Job creation within
2 the Coachella Valley – 20 points; (d) Effective use of funds – 10 points; (e) Secondary benefits,
3 other than jobs – 5 points; and (f) Community/government support – 5 points. In addition,
4 projects were awarded extra points if they were public agencies including cities, counties and
5 school districts. (See Exhibit I at page 7).

6 53. In a Staff Report ("Staff Report") dated February 9, 2012, CVAG Executive Director
7 Tom Kirk⁴ recommended that the Executive Committee: (1) Authorize submittal of an
8 application for the SCAQMD grant; (2) Authorize the Executive Director to complete all actions
9 necessary to develop and submit the grant application; and (3) Request letters of support,
10 commitment, or participation from member agencies, signed by member agencies' city managers,
11 or as required by the grant program. (See Exhibit J, CVAG Staff Report of February 9, 2012 at
12 page 1). The Background section of the Staff Report states that, under direction from the CVAG
13 Executive Committee at their January 30 meeting, CVAG staff had been actively developing
14 proposals for various grants that are available for the Parkway 1e11 project (the former name for
15 CV Link) for a neighborhood electric vehicle/bicycle/walking path along the Whitewater River
16 corridor and had anticipated SCAQMD's release of the RFP in early 2012 and the availability of
17 \$53 million in mitigation fund fees. (See Exhibit "J" "at" page 1).

20 54. Prior to submitting its proposal under the RFP, CVAG commissioned LSA Associates to
21 prepare a Preliminary Study Report for the proposed project ("LSA Report," see Exhibit K, LSA
22 Preliminary Study Report). In the LSA Report, one task recommended for immediate action in
23

24 ⁴ In an article published by The Desert Sun newspaper on December 11, 2014, it was reported that: "CV Link
25 started as a brainchild of Riverside County Supervisor John Benoit and CVAG executive director Tom Kirk, who
26 were looking for creative ways to secure some of the \$50-plus million in air pollution mitigation funds they knew
27 was coming to the region. The state legislation that helped fast-track the Sentinel project also forced the developer
to set aside money to offset any environmental impacts from the project. A regular walking or hiking trail likely
would not qualify for the funds. But one that allowed golf carts and neighborhood electric vehicles could." (See
Exhibit O, The Desert Sun article dated December 11, 2014)

1 order to move the project forward expeditiously was to prepare and submit the SCAQMD
2 proposal. The LSA Report noted the mitigation funds made available by AB 1318 provided a
3 rare opportunity because a large investment in the project in the form of a “down payment of
4 many millions of dollars” would likely attract additional funding and support. The LSA Report
5 concluded, “CVAG should dedicate resources to preparing an outstanding application that
6 clearly identifies the air quality benefits of the project and demonstrates the broad support the
7 proposal has received throughout the Coachella Valley.” (See LSA Report at page 30.)
8

9 55. The LSA Report acknowledged the significance and relevance of AB 61 to the
10 SCAQMD-AB 1318 grant. The LSA Report recommended that the development and approval
11 of an NEV transportation plan for the Coachella Valley per AB 61 was critical, and suggested
12 that the NEV transportation plan of the City of Lincoln, California, could be used as a model.
13 The LSA Report purported that the potential benefits from a NEV/Bicycle/Pedestrian path in the
14 Coachella Valley include “air quality improvements,” in that it would enable “people to travel
15 safely by bicycle or electric vehicle [and] will reduce the emissions that would have been
16 generated if these trips had been done with internal combustion-powered vehicles. NEVs are
17 zero emission vehicles that eliminate toxic emissions that result from traditional automobiles.
18 They are ideal for short distance trips which generate disproportionate levels of air pollution due
19 to the starting, stopping and restarting engines.” (See LSA Report at page 9)
20

21 56. On or about January 4, 2013, the SCAQMD Board authorized the SCAQMD Executive
22 Officer to negotiate and execute contracts with the applicants who had submitted winning
23 proposals under RPF #P2012-17. (See Exhibit L, SCAQMD Staff Report dated January 4,
24 2013). The criteria and process for selection is described at pages 7 through 9 of the Staff
25 Report. SCAQMD staff was also mandated to present semi-annual progress reports to the
26
27

Administrative Committee beginning no less than every six (6) months from the execution of the first contract, or more frequently if needed to provide updates on changes to projects or funding.

57. Attachment 2, Table 2-2 (Complete Ranking of All Projects, Including Back-up Projects, and Cumulative Totals for Award Categories) of the Staff Report identifies CVAG's proposal for \$38,000,000 in grant funds for the Parkway 1e11 project which ranked thirteenth (13th) with 88 points, and identifies CVAG's proposal was awarded \$17,400,000.

58. CVAG's eligibility for receipt of AB 1318 Mitigation Fees Funds was substantially reliant on the NEV component of CV Link. The NEV component of CV Link is indispensable, as it was touted as the mechanism that would result in sufficient emission-reductions under AB 1318. However, as previously indicated, CVAG did not lawfully adopt the NEV Transportation Plan and presently lacks the legal ability to adopt a NEV Transportation Plan. As such, CVAG's \$17.4 million emissions reduction contract with SCAQMD should be immediately terminated and the grant proceeds should be retracted and reallocated to other AB 1318 qualified projects in the Coachella Valley.

59. Even if CVAG was entitled to receipt of AB 1318 Mitigation Fees Funds, for all the reasons previously stated, CVAG should be enjoined from using Measure "A " funds to satisfy its matching contribution requirements under the grant award.

60. SCAQMD and CVAG entered into Sentinel Grant Contract No. 13459 (see Exhibit M, Sentinel Grant Contract No. 13459). Sentinel Grant Contract No. 13459 requires SCAQMD to reimburse CVAG \$17.4 million from the AB 1318 Mitigation Fees Fund for the development and construction of CV Link (see paragraph 13 (Payment) at page 4) and requires CVAG to provide \$26.4 million in matching funds for the development and construction of CV Link (see paragraph 12 (Co-Funding), at page 4 and the Statement of Work at Attachment 1). Since

CVAG cannot rely on the Expenditure Plan for the Coachella Valley or "voter intent" as legal authorization to expend Measure A funds for the operation, maintenance, engineering, acquisition and construction of CV Link, CVAG should be enjoined from using Measure A funds to satisfy the matching contribution requirements imposed under Sentinel Grant Contract No. 13459.

61. In light of the foregoing reasons, SCAQMD must terminate CVAG's AB 1318 emission reductions grant and reallocate the \$17.4 million; similar to what it did to the emission-reduction grant that was granted to the City of Desert Hot Springs. The City Desert Hot Springs ("City") submitted four separate proposals for projects that would reduce emissions in the City, along with one submission under the City's name, which was completed by Clean Energy for five (5) grant submissions. On January 12, 2013, the City received notification from SCAQMD that the City was to receive grant approval and funding for three (3) of its five (5) submissions consisting of a Building Solar Project, and CNG vehicle(s) project, and a PM-10 Dust Mitigation grant for two (2) separate matters consisting of the Cabot's Museum Paving Project and the Vacant Land Stabilization Program. (See Exhibit N, Desert Hot Springs Staff Report, dated December 2, 2016.)

62. Staff at SCAQMD and at the City worked together for approximately three (3) years to modify the Vacant Land Stabilization Program as approved by SCAQMD. The original program's scope provided a matching contribution of funds to qualifying privately owned projects, which would implement dust reduction measures within a defined area contained within the City. The total funding available was a fifty-percent (50%) match paid by SCAQMD up to \$20,000 per lot, to be reimbursed after project completion. After only a limited number of applications were received, SCAQMD agreed to: (a) expand the defined area to include the

1 entire area within the jurisdictional boundaries of the City of Desert Hot Springs; (b) increase the
2 match to one-hundred percent (100%) for Chemical Stabilizing Projects; (c) increase the
3 maximum of \$20,000 per lot to be unlimited; and (d) include properties and/or projects owned by
4 the City and the Successor Agency to the former Redevelopment Agency of the City of Desert
5 Hot Springs ("Successor Agency"), provided that the total amount of acreage for mitigation was
6 60 acres or more.

7
8 63. With extensive community outreach, the City of Desert Hot Springs made every effort to
9 find viable projects to meet the 60-acre requirement. The City dispatched two (2) separate
10 mailers to all property owners in English and Spanish. The City posted the information and the
11 application for the Vacant Land Stabilization Program on the City's website, and City staff
12 provided updated grant information at several City Council meetings. Additionally, City staff
13 provided the grant information on the City's cable television channel. Moreover, grant
14 information was placed on the public table at City Council meetings. City staff responded to
15 seven (7) applicants who were interested in the grant, and City staff met and reviewed with the
16 City Council all of the proposed City and/or Successor Agency projects. Notwithstanding all of
17 the City's community outreach efforts, City staff was only able to come up with projects that
18 would meet approximately 20-acres, which is 40-acres short of the minimal requirements as
19 approved in the grant modification. Additionally, only seven (7) private property owners applied
20 and completed the preliminary paperwork and pre-application required by the program.

21
22 64. After extensive deliberation between City staff, SCAQMD management staff, SCAQMD
23 Board members, and discussions with the late Supervisor John Benoit, SCAQMD informed the
24 City that given all of the issues with the original approved scope of work for the Vacant Land
25 Stabilization Program, the time elapse of four (4) years, the minimal total acreage, and the end
26

1 result of the PM10 Dust Mitigation Measures, SCAQMD decided to re-allocate the \$1.4 million
2 in funding to another qualified applicant in order to meet SCAQMD's ultimate PM10 Dust
3 Mitigation goals and needs. SCAQMD noted that the City was not the only city that had to have
4 their funding re-allocated. The City of Coachella also had funding re-allocated for failure to get
5 their approved project off the ground. In early November 2016, the City received a contract
6 amendment from SCAQMD, which deleted the PM-10 Mitigation Vacant Land Stabilization
7 Program in its entirety, and re-allocated a total of \$1.4 million in funding to another AB 1318
8 eligible project. On or about December 6, 2016, the City Manager executed the amendment to
9 the South Coast Air Quality District Grant Number 134483, reducing the scope of the emissions-
10 reduction contract by deleting Project 2 (Vacant Land Stabilization Program) totaling
11 \$1,478,957.00.

13 65. In light of the foregoing, it is clear that the NEV component of CV Link was the major
14 qualifying factor that lead to the award of \$17.4 million to CVAG. The NEV component was
15 touted as the mechanism that would result in sufficient emission-reductions under AB 1318.
16 However, since CVAG did not adopt a NEV transportation plan, and since the NEV legislation
17 now expired, CVAG lacks the legal ability to adopt a NEV transportation plan that is
18 indispensable to implementing the NEV component of CV Link. As such, CVAG's \$17.4 million
19 emissions reduction contract with SCAQMD should be immediately terminated and the grant
20 proceeds should be retracted and reallocated to other AB 1318 qualified projects in the Coachella
21 Valley, just like SCAQMD did with the AB 1318 grant awarded to the City of Desert Hot
22 Springs.

25 66. Pursuant to the CVAG's AB 1318 Contract No. 13459, under the Termination provision,
26 it provides that, "In the event any party fails to comply with any term or condition of this
27

1 Contract, or fails to provide services in the manner agreed upon by the parties, including, but not
2 limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a
3 breach of this Contract.” Under the Governing Law provision of the contract, it provides that,
4 “This Contract shall be construed and interpreted and the legal relations created thereby shall be
5 determined in accordance with the laws of the State of California.” The contract also specifically
6 required the “Development of a Coachella Valley Neighborhood Electric Vehicle Transportation
7 Plan.” Finally, under the contract, CVAG is obligated to report to SCAQMD, “any significant
8 problems encountered during the contract and how they were resolved.” (See Exhibit M,
9 Sentinel Grant Contract No. 13459).

11 67. Certainly, CVAG’s inability to implement the NEV component of CV Link is a clear sign
12 that CVAG cannot meet the emissions reduction objective set forth in its AB 1318 emissions
13 reduction contract, which are grounds for termination of the contract. Immediate termination of
14 the contract is necessary to avoid the unauthorized expenditure of the AB 1318 emission
15 reduction grant monies.

17 68. In light of the foregoing, and the fact that CVAG cannot adopt an NEV transportation
18 plan due to the expiration of the NEV legislation and the lack of an Implementation Agreement
19 (as more particularly described in this petition), it is patently unfair and irresponsible for
20 SCAQMD to allow CVAG to continue to maintain the \$17.4 million it was awarded from the
21 Sentinel Plant emission reduction grant program, while retracting and reallocating the same grant
22 that was awarded to the City of Desert Hot Springs for less egregious reasons. Unlike the City of
23 Desert Hot Springs, CVAG made no good faith effort to ensure that the necessary (emission-
24 reduction) NEV transportation plan was adopted, even though CVAG, based on information and
25 belief, knew that the NEV legislation had an automatic expiration date, yet failed to bring it to
26

1 the attention of the CVAG Executive Committee and the public.

2 **FIRST CAUSE OF ACTION**

3 **Directed to CVAG**

4 **Writ of Mandate and Injunctive and Declaratory Relief**

5 **Violation of Measure A – Unlawful Expenditure of Special Tax Proceeds**

6 69. Petitioner/Plaintiff hereby re-alleges paragraphs 1 through 68, inclusive, and incorporates
7 them by reference as if fully set forth below.

8
9 70. Respondent/Defendant CVAG secured AB 1318 Mitigation Fees Funds from SCAQMD
10 by committing \$26.4 million in Measure A funding in violation of Measure “A,” a special tax, as
11 approved and amended by the voters in 1988 and 2002, respectively. As previously stated, the
12 Expenditure Plan for Measure A as approved by voters did not contemplate the expenditure of
13 these special tax proceeds for a NEV Transportation Plan, which means that any such
14 expenditure would be an illegal expenditure of those special tax proceeds. In light of the
15 foregoing, and in consideration of the additional facts and analysis included herein,
16 CVAG should be immediately restrained and permanently enjoined from using, committing,
17 allocating, reserving and/or spending any funds, revenues or proceeds generated by Measure A
18 for purposes related to the construction, maintenance, operation, capital acquisition, planning,
19 environmental review, engineering, design and right-of-way acquisition pertaining to the NEV
20 component of the proposed CV Link Project, including using Measure A funds as a matching
21 contribution for receipt of AB 1318 Mitigation Fees Funds from SCAQMD.
22
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1 74. Respondent/Defendant SCAQMD is responsible for administering the AB 1318
2 Mitigation Fees Funds in accordance with Health & Safety Code Section 40440.14, which
3 requires AB 1318 Mitigation Fees Fund to be used to fund emission-reduction (mitigation)
4 projects. Since CVAG's eligibility for receipt of AB 1318 Mitigation Fees Funds was
5 substantially reliant on the invalid NEV component of CV Link, SCAQMD's Sentinel Grant
6 Contract No. 13459 with CVAG requires SCAQMD to terminate said contract and to reallocate
7 the \$17.4 million to qualified emission-reduction projects within the Coachella Valley. In light
8 of the foregoing, SCAQMD should be enjoined from expending any AB 1318 Mitigation Fees
9 Funds in furtherance of the construction, maintenance, operation, capital acquisition, planning,
10 environmental review, engineering, design and right-of-way acquisition pertaining to the NEV
11 component of CV Link Project.
12

13 **FOURTH CAUSE OF ACTION**

14 **Directed to CVAG**

15 **Writ of Mandate and Injunctive and Declaratory Relief**

16 **Violation of Measure A – Unlawful Expenditure of Mitigation Impact Fees**

17 75. Petitioner/Plaintiff hereby re-alleges paragraphs 1 through 74, inclusive, and incorporates
18 them by reference as if fully set forth below.
19

20 76. Respondent/Defendant CVAG administers the TUMF program in trust for the
21 jurisdictions that make up the membership of CVAG and therefore CVAG has a fiduciary and
22 legal obligation to ensure that all TUMF proceeds are spent, used, committed, allocated, and
23 reserved in a manner consistent with the provisions of Measure A and the Mitigation Fee Act as
24 set forth in Government Code §§ 66000 *et seq.* Since CV Link, with or without its NEV
25 component, does not qualify for funding under TUMF, CVAG has acted arbitrarily and
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27

1 capriciously without authority of law by allocating and committing the use of TUMF proceeds
2 toward the construction and maintenance of CV Link.

3 **PRAYER**

4 WHEREFORE, Petitioner/Plaintiff prays for relief as follows:

5
6 1. For a judicial order and injunctive relief, directing CVAG to cease using, committing,
7 allocating, reserving and/or spending any funds, revenues or proceeds from Measure A in
8 furtherance of the construction, maintenance, operation, capital acquisition, planning,
9 environmental review, engineering, design and right-of-way acquisition pertaining to the CV
10 Link Project.

11
12 2. For a judicial order and injunctive relief, restraining CVAG from violating Articles
13 XIIIIC and XIID of the California Constitution.

14 3. For a judicial order and injunctive relief, directing CVAG to cease using, committing,
15 allocating, reserving and/or spending any funds, revenues or proceeds from the TUMF program
16 in furtherance of the construction, maintenance, operation, capital acquisition, planning,
17 environmental review, engineering, design and right-of-way acquisition pertaining to the CV
18 Link Project.

19
20 4. For a judicial order and injunctive relief, restraining CVAG from violating the
21 Mitigation Fee Act as set forth in Government Code §§ 66000 *et seq.*

22 5. For a judicial order and injunctive relief, restraining CVAG from applying for any grants
23 under any federal, state or local programs for assistance in developing the NEV component of
24 CV Link and from acquiring, holding, leasing, or selling any real property related to the NEV
25 component of CV Link.
26

6. For a judicial order and injunctive relief, directing RCTC to cease using, committing, allocating, reserving and/or spending any funds, revenues or proceeds from Measure A in furtherance of the construction, maintenance, operation, capital acquisition, planning, environmental review, engineering, design and right-of-way acquisition pertaining to the CV Link Project.

7. For a judicial order and injunctive relief, restraining RCTC from violating Articles XIIC and XIID of the California Constitution.

8. For a judicial order and injunctive relief, directing SCAQMD to terminate Contract No. 13459 and reallocate the contract's \$17.4 million to eligible emission-reduction projects in the Coachella Valley and to cease using, committing, allocating, reserving and/or spending any funds, revenues or proceeds from AB 1318 in furtherance of the CV Link Project.

9. For a judicial order and injunctive relief, restraining SCAQMD from violating the County Transportation Commission Act, which is set forth in California Public Utilities Code Sections 130000 *et seq.*

10. For attorneys' fees and costs; pursuant to CCP §1021.5; and

11. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

FERGUSON LAW FIRM

DATED: October 13, 2017

BY:

JAMES CATO FERGUSON