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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DEFEND BALLONA WETLANDS, a California
unincorporated association; ROBERT JAN VAN
DE HOEK, an individual; and MOLLY BASLER,
an individual,

Petitioners,

vs.

CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE, a California state agency,

Respondent.

CASE NO. 21STCP00240

**VERIFIED PETITION FOR WRIT OF
MANDATE**

[CEQA Case]

INTRODUCTION

1. In the year 2000, California voters overwhelmingly approved Proposition 12, creating a \$2.1 billion bond “to spend on acquisition, development, and protection of recreational, cultural, and natural areas.”

2. Twenty-five million dollars of the bond was specifically to be allocated “to acquire, protect, and restore wetlands projects that are a minimum of 400 acres in size in any county with a population greater than 5,000,000,” referring specifically to Ballona Wetlands, currently home to approximately 1,700 animal and plant species – some threatened and endangered, and the last remaining coastal wetlands in Los Angeles.

1 3. In related case *Defend Ballona Wetlands v. California State Coastal Conservancy*, Case
2 No. 20STCV29911, Petitioners are separately challenging the actions of the California Coastal
3 Conservancy and its Executive Director, Sam Schuchat, (who has a documented history of investing in
4 the fossil fuel industry as seen at [https://www.laweekly.com/why-does-a-coastal-conservancy-exec-
5 own-piles-of-offshore-oil-stock/](https://www.laweekly.com/why-does-a-coastal-conservancy-exec-own-piles-of-offshore-oil-stock/)), in having misspent more than \$12,000,000 of this bond money
6 researching ways to *destroy* the wetlands, so that Schuchat’s allies at SoCalGas/Sempra can upgrade
7 their storage facility for natural gas *under* the wetlands, under the guise of “restoration.”

8 4. The dangerous practice of underground fossil fuel storage on the Los Angeles coast
9 began in the 1940s and continues to this day, unbeknownst to the public. This practice allows SoCalGas
10 to purchase natural gas cheaply during summer months, pipe it in to California from Oklahoma, Texas
11 and Utah, pump it *into* the ground below the wetlands, and then pump it out again to resell in the winter
12 when natural gas is more expensive. The archaic oil and gas storage infrastructure is now crumbling.

13 5. Elected officials, fearful of another explosion like the one that occurred at Aliso Canyon,
14 have called for shutting down the facility under the Ballona Wetlands. In a desperate effort to avoid
15 closure, this cynical and counterfeit “restoration” is a pretext for the real agenda of fixing old and adding
16 newer infrastructure.

17 6. To this end, Schuchat and his industry-captured agency have also financed front groups
18 to pitch the project, most notably The Santa Monica Bay Restoration Foundation (also known as “The
19 Bay Foundation”), which planned and designed the bulldozing and excavation project Respondent
20 CDFW is inaccurately touting as a “restoration.” The Bay Foundation is a private entity that owns no
21 land at Ballona, but receives funding from SoCalGas and also had a SoCalGas executive on its board of
22 directors until late last summer. The previous executive director of this organization is now the CEO of
23 Heal the Bay, which additionally supports the bulldozing/excavation plan and has also received funding
24 from SoCalGas for many years.

25 7. The Bay Foundation has received significant sums of money from the State Coastal
26 Conservancy to oversee the management and planning process for the project proposed for the Ballona
27 Wetlands. The Bay Foundation is also a defendant in Petitioners’ related case challenging the
28 misspending of bond money on this counterfeit “restoration.”

1 8. Other groups that are supporting the project have also received funding from SoCalGas.
2 One prominent one, Friends of Ballona Wetlands, has a current executive from SoCalGas on its board of
3 directors, currently serving as Vice President for the “Friends.” Additionally, Jacob Lipa, was the
4 President of the Friends of Ballona Wetlands from 2008-2010, when the proposal for excavation and
5 bulldozing of the Ballona Wetlands was being finalized. Lipa is still listed as of today on the website for
6 Friends of Ballona Wetlands as a “Board Delegate.” Lipa was also the President of the engineering firm,
7 Psomas, a post he held for 17 years. Coincidentally, the Coastal Conservancy awarded Psomas a
8 contract in 2013 for more than \$2 million for work on the “enhancement” of the Ballona Wetlands State
9 Ecological Reserve. A recent extension of this contract was signed on January 1, 2018.

10 9. Proponents of this disingenuous project falsely describe the Ballona Wetlands State
11 Ecological Reserve as being terribly “degraded” and needing intervention or “the wetlands will die,”
12 when it is actually thriving and teeming with wildlife, including being relied on by seven endangered
13 species and dozens of species on the State of California’s list of Species of Special Concern.

14 10. Most of the surface rights to the land are owned by Respondent CDFW, while 60 acres of
15 the surface rights are owned by the California State Lands Commission. Mineral rights for most of the
16 area are owned or leased by SoCalGas/Sempra. Some additional surface acreage immediately adjacent
17 to the ecological reserve, including sensitive wetlands, including an historical tidal slough, are owned by
18 SoCalGas (possibly long-term leased from the federal government.)

19 11. The waterway that runs through the middle of the ecological reserve, called Ballona
20 Creek, is owned/managed by US Army Corps of Engineers & Los Angeles County Public Works/Flood
21 Control District. Some of the land in the creek channel is also owned by CDFW.

22 12. A final Environmental Impact Report (“EIR”) was released in December 2019. A
23 preferred project was not actually selected, but it was clear from the review documents which project
24 was being favored. The EIR was prepared by Respondent CDFW.

25 13. CDFW certified the EIR on December 30, 2020.

26 14. At the same time that the scoping began for the EIR process, the federal government was
27 required to undertake an environmental review process, as required by the National Environmental
28 Policy Act (“NEPA”). Because destruction, i.e. “filling,” of wetlands is involved, the US Army Corps of

1 Engineers, per the Clean Water Act, was designated as the federal lead agency. The Army Corps of
2 Engineers issued scoping, as well, and also issued a Draft Environmental Impact Statement (“EIS”), in
3 September of 2017, when the State issued its draft EIR. The only hearing for this proposed project was
4 convened in November of 2017, overseen by the US Army Corps of Engineers, CDFW and LA County
5 Flood Control District/Public Works. A transcript from that hearing is included in the FEIR.

6 15. The Army Corps of Engineers did not issue a final EIS at the same time that the state
7 issued its final EIR. The Army Corps of Engineers indicated at that time that it would be at least 1.5
8 years before it would be ready to issue a Final EIS. Now, CDFW states it will be at least 2.5 years before
9 the Army Corps of Engineers would be expected to issue a Final EIS.

10 ([https://cdfgnews.wordpress.com/2020/12/30/cdfw-approves-restoration-project-for-ballona-wetlands-
11 ecological-reserve/](https://cdfgnews.wordpress.com/2020/12/30/cdfw-approves-restoration-project-for-ballona-wetlands-ecological-reserve/))

12 16. CDFW previously described the following anticipated timeline on its website:

- 13 • CDFW begins preparing the next 408 application submittal to the Army Corps
14 of Engineers, including 60 percent design plans and detailed engineering
15 technical analyses (roughly six to 10 months)
- 16 • Los Angeles County Flood Control District (LACFCD) provides input and
17 agrees to submit the 408 application submittal on behalf of CDFW (roughly
18 three months)
- 19 • LACFCD submits 408 application submittal to the Army Corps of Engineers for
20 its review and processing (roughly 12 months), and subsequent review by the
21 Army Corps of Engineers Headquarters in Washington, D.C. (unknown). Army
22 Corps of Engineers finalizes the Environmental Impact Statement
- 23 • CDFW seeks approvals from other agencies, e.g. Coastal Commission, Regional
24 Water Quality Control Board, etc. (timing depends on the permitting agency’s
25 process)

26 (<https://wildlife.ca.gov/Regions/5/Ballona-EIR>)

27 17. Along with the certification of the EIR, CDFW has posted a “Ballona Wetlands
28 Restoration Project FAQs,” which states, in part: “The EIR analyzed a range of restoration alternatives.
CDFW selected the most restorative option (“Alternative 1”) but made a commitment to execute the
project in phases – which will allow for restoration to begin without having the entire sum of funding in
place. By utilizing a phased approach, CDFW will also be able to monitor and evaluate smaller phases

1 of restoration.” There is no description of these phases, or revealing of what these phases might entail or
2 how long they would last, whether or not other permits might be necessary or how these phases dovetail
3 with the federal NEPA process, leaving the public behind a veil of secrecy that CDFW apparently
4 wished to install. CEQA’s intent of an EIR being an instrument of transparency for the public appears to
5 be ignored.

6 **JURISDICTION AND VENUE**

7 18. This Court has jurisdiction over the claims asserted because Respondent is a state agency,
8 and relief is sought under CCP sections 526, 1060, 1085, and 1094.5; and PRC §§ 21168 and 21168.5.

9 19. Venue is proper in this county as the acts upon which this action is based occurred in this
10 county, and the project site is located in this county.

11 **PARTIES**

12 20. Petitioner Defend Ballona Wetlands is an unincorporated association formed in April,
13 2020, members of which previously commented on the draft EIR during the public comment period,
14 including Petitioners van de Hoek and Basler.

15 21. Petitioner Robert Jan van de Hoek is an individual residing in Los Angeles County. Van
16 de Hoek is a wildlife biologist who commented on the draft EIR during the public comment period.

17 22. Respondent Molly Basler is an individual residing in Los Angeles County who
18 commented on the draft EIR during the public comment period.

19 23. Respondent California Department of Fish and Wildlife (“CDFW”) is the lead agency for
20 the project.

21 **GENERAL ALLEGATIONS**

22 24. Nearly \$15,000,000 of Proposition 12 bonds were spent on the “planning” and
23 “engineering” for this destructive project – one that cannot legitimately be called a “restoration” but
24 rather is a destruction and creation of something entirely novel and different than what was in this place
25 for at least the last 4,000 years, even though the bond language does not say anything about “planning,”
26 “engineering,” “demolishing” or “creation,” but instead specified the money was only to be used to
27 “protect, acquire or restore” these wetlands.

28 25. A February 2, 2012 article appearing in The Argonaut entitled “FUNDING FOR

1 HYDROLOGICAL STUDIES, PUBLIC ACCESS DESIGN IN ENVIRONMENTAL RESERVE”
2 reported on \$6.25 million dollars from the Prop 12 bond that was allocated by the Coastal Conservancy
3 “for hydrological analysis and scenic trail design in the 600-acre ecological reserve.” The article appears
4 at [https://argonautnews.com/coastal-conservancy-approves-funding-for-hydrological-studies-public-
5 access-design-in-environmental-reserve/](https://argonautnews.com/coastal-conservancy-approves-funding-for-hydrological-studies-public-access-design-in-environmental-reserve/)

6 26. As stated in the article:

7 Coastal Conservancy Programs Manager Mary Small
8 said the commission, which has been conducting
9 baseline environmental studies in Ballona, will work
10 with the technical experts hired by the conservancy.

11 “This will enable us to do the engineering work in
12 order to apply for required environmental permits,”
13 Small explained.

14 27. Santa Monica Bay Restoration Commission biologist Karina Johnston is quoted in the
15 article as stating: “I think there is some confusion between the funds that were allocated to go towards
16 the planning and science, and the actual restoration itself.”

17 28. Misuse of funds by the State Coastal Conservancy has included flying staff to and from
18 Oakland to stay in hotels in Playa del Rey. State Coastal Conservancy staff were also observed dining
19 with The Bay Foundation staff at Cantalini’s restaurant to discuss plans to destroy the reserve under the
20 guise of “restoration.”

21 29. Los Angeles Audubon Society points out the disingenuous nature of this project in their
22 comments submitted to the draft EIR/EIS: “[T]he EIR fails to accurately describe the project. (LPP
23 Report, Section 3.1) The proposed project is not a restoration within the plain meaning of that term, nor
24 a restoration as that term is defined in the Code of Federal Regulations.”

25 30. The Los Angeles Audubon Society Response to Draft EIR/EIS also points out: “[T]he
26 project is misnamed as a restoration project. As discussed by the attached report of Land Protection
27 Partners, the project is not restoration but rather removal of currently existing wetlands and replacement
28 with a non-naturally occurring wetland. Therefore, the project description is misleading.”

31. Dr. Travis Longcore, who has studied the historical ecology of the area, states regularly
that the plans for Ballona would not lead to a “restoration.” Specifically, Dr. Longcore has stated in a

1 letter contained in the administrative record, “Moving the channels will not ‘restore’ the wetlands. To
2 the contrary, it would introduce permanent tidal flow to areas that historically did not have such flows.”

3 32. Dr. Margot Griswold, a restoration ecologist, who is President of Los Angeles Audubon
4 Society, has also stated that this plan is “not a restoration.” In a video that is part of the administrative
5 record, Dr. Griswold explains that the project is more accurately described as a “creation” of something
6 that did not exist before, which is a full tidal bay, and the destruction of a freshwater and brackish
7 wetlands.

8 33. Additionally, while the project calls for increasing public access, amenities, paid for with
9 state bond money, including bike racks and benches have already been installed, yet the public cannot
10 use them. The gates are locked to the Fiji Way gate, except to SoCalGas employees, who hold the keys
11 and drive their vehicles on the trails where the public could otherwise walk, learn about nature and enjoy
12 the ecological reserve.

13 34. Now, Respondent has the audacity to claim this sham “restoration” would provide public
14 access when such access already exists, yet some of it is being withheld from the public. In fact, the
15 public access that is touted as being so wonderful when the “restoration” is finished, will, instead, be
16 diminished, with a beloved, well-used bicycle path to be demolished (as seen at
17 [https://www.latimes.com/opinion/story/2020-04-26/column-feeling-sad-lethargic-fearful-happiness-is-](https://www.latimes.com/opinion/story/2020-04-26/column-feeling-sad-lethargic-fearful-happiness-is-just-a-bike-ride-away)
18 [just-a-bike-ride-away](https://www.latimes.com/opinion/story/2020-04-26/column-feeling-sad-lethargic-fearful-happiness-is-just-a-bike-ride-away)) and a recreational, competitive rowing area of the creek being rendered un-
19 usable, according to comments made in the EIR by the California Coastal Commission staff.

20 35. According to the EIR, this project, if it proceeds, would involve nine years of bulldozing
21 hundreds of acres of land, with the negative impacts glossed over and ignored. The impact would be to
22 almost the entirety of the 640 acres in this Ballona Wetlands State Ecological Reserve and adjacent State
23 Lands Commission lands, obliterating the natural beauty of this seaside community and spelling certain
24 death for thousands of wild animals with nowhere to go. The proposed project is not a restoration; it is a
25 boondoggle that is not in the public interest and is not adequately described in the EIR.

26 36. It is particularly cynical that CDFW is giving this proposed industrial habitat alteration
27 and construction project the green light under California Governor Gavin Newsom, whose cabinet
28 officials just this week convened hundreds of advocates for protection of nature to participate in a

1 webinar supporting “climate smart land management” and other important concepts that lead the public
2 to believe there is a strong commitment in this state government to support “Nature Based Solutions” to
3 climate change. This project proposed for the Ballona Wetlands is the opposite of all that this initiative
4 is supposed to stand for.

5
6 **FIRST CAUSE OF ACTION**
7 **(Writ of Mandate)**

8 37. Petitioners incorporate all previous paragraphs as if fully set forth herein.

9 38. Respondent CDFW is the lead agency responsible under the California Environmental
10 Quality Act (“CEQA”) for evaluating the environmental impacts of the project.

11 39. CDFW caused a draft environmental impact report (“EIR”) for the project to be prepared
12 and circulated from September 25, 2017 to February 5, 2018. The final EIR was completed on
13 December 20, 2019.

14 40. By decision by CDFW staff Ed Pert, dated December 30, 2020, respondent resolved to
15 certify the adequacy of the EIR under CEQA (Public Resources Code §§21000–21189.3). On December
16 30, 2020, Respondent certified the final EIR. A notice of determination to carry out the project was filed
17 by respondent on December 30, 2020.

18 41. Petitioner, other agencies, interested groups, and individuals made oral and written
19 comments on the draft EIR and raised each of the legal deficiencies asserted in this petition.

20 42. Petitioners performed all conditions precedent to filing this action by complying with the
21 requirements of Public Resources Code §21167.5 in filing notice of this action on January 28, 2021.

22 43. CDFW’s actions in certifying the EIR and adopting findings constitute a prejudicial
23 abuse of discretion in that it failed to proceed in the manner required by law, and its decision is not
24 supported by substantial evidence.

25 44. The project description in the EIR is incomplete and misleading in that it describes the
26 project as a “restoration,” when it is in fact destruction of a mosaic of habitats, including the existing
27 wetlands, grasslands, coastal scrub, sand dune and other upland habitats, and the creation of something
28 entirely different.

45. The EIR fails to evaluate the project’s significant impacts on grasslands and other

1 important upland habitats, as well as freshwater and brackish wetlands, the already vibrant estuary in
2 Ballona Creek, endangered species, and public access.

3 46. The EIR fails to respond adequately to comments on the draft EIR, including comments
4 regarding the project’s significant impacts on grasslands and other important upland habitats, as well as
5 freshwater and brackish wetlands, endangered species, public access, and the project being a destruction
6 of the existing wetlands, including the estuary of Ballona Creek, rather than a “restoration.”

7 47. Respondent failed to adopt a legally adequate statement of overriding considerations in
8 that there is no reason identified for destroying the brackish and freshwater wetlands, grasslands, coastal
9 scrub and other upland habitats, including habitat for endangered species, and public access.

10 48. In response to Comment Letter to DEIR by Robert Jan van de Hoek 03-61, asking where
11 the disclosures and discussions of impacts related to the longitudinal sandbar in the middle of Ballona
12 Creek are, CDFW responded inadequately: “See Draft EIS/EIR Appendix F1 for an analysis of the
13 sediment dynamics within Ballona Creek.” This response does not refer to any substantial evidence.
14 Petitioner did not ask for sediment dynamics found in Appendix F1, which is a micro-analysis based on
15 using the term of “sediment analysis.”

16 49. Petitioner’s questions asked for macro-geomorphology and landscape “impacts related to
17 the longitudinal sand bar in the middle of Ballona Creek.” Clearly, Respondent does not even know that
18 there is a longitudinal sand bar landform type, which is a unique landscape feature of certain kinds of
19 estuaries. Respondent does not recognize that Ballona Creek is a functional estuary from a structural
20 geomorphology or landscape perspective.

21 50. Nor does Respondent recognize the significance of a longitudinal sand bar generally to
22 animal life and plant life, with regard to infauna (clams, worms, shrimp) and the epifauna/flora
23 (barnacles, marine algae, snails as a few examples). There is a rare worm, first described as type locality
24 from Ballona Estuary (Del Rey Lagoon) known commonly as the Ballona Bristleworm (*Polydora*
25 *nuchalis*), which is found in the Longitudinal Sand Bar infauna of Ballona Creek Estuary.

26 51. Longitudinal sand bar is habitat for large schooling native fish at high tide such as the
27 Striped Mullet, prey for the rare Osprey. And at low tide, the longitudinal sand bar is vital habitat for
28 resting sea birds, shore birds, waterfowl, water birds, wading birds, and resting (hauled out) marine

1 mammals (seals and sea lions).

2 52. If the levees are bulldozed and demolished the estuary found between the levees with the
3 longitudinal sand bar would be destroyed and altered into so-called “meander,” which would be dredged
4 and recontoured artificially, with new levees built far away at the margin of the project boundaries.

5 53. There is no substantial evidence in the record to back up Respondent’s response to
6 Petitioner’s comment about the longitudinal sand bar.

7 54. Under CEQA, the longitudinal sand bar is a part of the physical environment as a
8 hydrological and geomorphological and physiographic feature, the only one known in Los Angeles
9 County and rare. In the biological environment, there are also all the animals and plants associated with
10 longitudinal sand bar.

11 55. The longitudinal sand bar is approximately 0.5 miles in length, approximately 30 meters
12 in width and approximately 5 feet in depth of fine-sand, which forms sand ripples and micro-waves
13 during rising ocean tides twice each day of the year with a rhythm.

14 56. The longitudinal sand bar began to form in the late 1930s, after the 1938 flood that
15 resulted in human death and flooding damage, so the levees were constructed. The Longitudinal Sand
16 Bar became stable in all three dimensions mentioned above by the 1960s, now more than 50 years ago.

17 57. The Longitudinal Sand Bar as a geomorphic, physiographic, hydrologic, and coastal
18 landscape feature has established stability, now in a very dynamic equilibrium.

19 58. There is no substantial evidence in the EIR with regard to the Longitudinal Sand Bar,
20 sometimes known as a “river bar,” making the project description untruthful, untransparent, and
21 unscientific.

22 59. Another example of how Respondent dismissed and ignored public comments referring
23 to lack of substantial evidence is the “beneficial impact to carbon sequestration” section, which ignores
24 the commenter – who states that Respondent’s claim that excavation of over two million cubic yards of
25 soil (and removing plants and animals in the process) is erroneous and that instead, leaving that carbon-
26 rich soil, plants and animals intact would “provide some of the best ways to sequester carbon.” The
27 commenter’s points are significant, and are not addressed in the carbon sequestration analysis – the
28 hundreds of acres of plants and animals are already storing and sequestering carbon.

1 60. Commenter Nicole Lackowski, who is a trained Climate Reality Leader, trained by Al
2 Gore in his Climate Reality Project, stated: “Wetlands - with their plants and life-filled soils - provide
3 some of the best ways to sequester carbon. But the project’s proposed ‘realignment’ of creeks; lowering
4 of land; bulldozing; excavating over two million cubic yards of soil (and removing plants and animals in
5 the process) could completely destroy this fragile ecosystem.”

6 61. Respondent’s wholly inadequate response was simply, “See Response O6-12, which
7 discusses the Project’s beneficial impact to carbon sequestration.” The inadequate response was about
8 future carbon sequestration, not the current carbon storage and sequestration that Ms. Lackowski
9 commented about existing at the ecological reserve, which includes thousands of trees, millions of
10 plants, bushes and rich soil, (which is increasingly understood by scientists to be important for carbon
11 storage and sequestration.)

12 62. Respondent’s response to commenter Jill Stewart was also entirely inadequate, only
13 discussing what GHG/carbon sequestration in the future may be, without at all addressing the carbon
14 storage and carbon sequestration being displaced from the project.

15 63. Respondent seems to be looking at what the marsh might be like in 100 years, without
16 addressing all of the carbon storage and carbon sequestration that is currently at Ballona in the
17 plants, animals and soil, which will be lost in the meantime.

18 64. There is no substantial evidence in the record to support Respondent’s claim that a
19 project that removes the surface soil and nearly every plant and animal from the ecosystem is the
20 “Environmentally Superior Alternative.”

21 65. On page 2-46 of the EIR, Respondent states it did not know about the illegal drains in the
22 wetlands until 2013, and then Respondent goes on to use the arguments it used with the Coastal
23 Commission about why the drains should be ignored. As was entered into the record by numerous
24 organizations, including Los Angeles Audubon Society and Sierra Club, it is clear that the Coastal
25 Commission did not agree that these drains were insignificant, and the Coastal Commission ordered the
26 drains to be sealed so that rain water would not be allowed to be drained from the wetlands, but rather
27 would soak into the soils where seasonal wetlands could once again be refreshed by that rain water.

28 66. Then on page 2-48 of the EIR, Respondent claims, “Consideration of the uncapped drains

1 (in place) was described accurately in the Draft EIS/EIR as part of the baseline condition because they
2 were present as part of the actual physical environment when the environmental analysis of the proposed
3 restoration project began.”

4 67. The point of the public comments on this is that baseline conditions were not in
5 alignment with the capping of the drains, which did not take place for many months after the Coastal
6 Commission so ordered. This new baseline condition needs to be considered, which Respondent failed
7 to do.

8 68. This new information became obvious in between the time of the release of the Draft EIR
9 and the comments made on that DEIR. It has since become clear to observers that more rainwater was
10 able to soak into the soils, refreshing the seasonal wetlands in the areas where the drains had been
11 making these wetlands unnaturally dry for approximately 20 years. The EIR should have been re-
12 circulated, taking into account this new situation, prior to the Final EIR being certified.

13 69. Respondent also states on page 2-49, “As mentioned above, the uncapped drains have
14 had no measurable effect on the Ballona Reserve from either a biological or hydrological perspective. So
15 it is unclear how identifying or capping the drains could result in significant new information that would
16 require recirculation of the EIR.”

17 70. This, again, re-states CDFW’s assertions made during the hearing of the California
18 Coastal Commission of December, 2017, assertions which were rejected by the Coastal Commission and
19 are not supported by substantial evidence.

20 71. On pages 2-49 and 2-50, Respondent mentions Palmer’s Goldenbush, which is not a
21 “common species.” – yet, this is their puzzling rationale for not pursuing protection of the habitat that
22 supports this species: “As such, common species typically more readily reestablish themselves following
23 disturbance. It is also worth noting, although it’s not definitive, that CEQA’s Appendix G threshold of
24 significance Part IV.a. similarly focuses on special status species as opposed to common species.”

25 72. Then, Respondent includes this chart, which does not include other special status species
26 identified in the submissions by Sierra Club and Petitioner van de Hoek:

TABLE 2-2
LOCATIONS OF SPECIES' DESCRIPTIONS IN THE DRAFT EIS/EIR

Species Name	Draft EIS/EIR Location	Species Name	Draft EIS/EIR Location
Lewis' evening-primrose	Section 3.4	Monarch butterfly	Section 3.4
Wandering skipper butterfly	Section 3.4	Orcutt's yellow pincushion	Section 3.4
South coast marsh vole	Section 3.4	Slender arrow-grass	Not cited in botanical surveys or Draft EIS/EIR; not special-status.
Silvery legless lizard	Section 3.4	Suffrutescent wallflower	Section 3.4
Southern tarplant	Appendix D3	Alkali barley (not special-status)	D14-72; unidentified barley in Appendix D3.
Southern California ornate shrew	Section 3.4	Woolly seablite	Section 3.4
Grasshopper sparrow (nesting sites protected)	Appendix D5	Slender salamander (not special-status)	Section 3.4
California horned lizard	Discussed in response I18-4.	California kingsnake (not special-status)	Section 3.4
Western sand spurrey	Not cited in botanical surveys or Draft EIS/EIR; not found south of Humboldt County.	Loggerhead shrike	Section 3.4
Southern marsh harvest mouse (not special-status)	Section 3.4	Western meadowlark	Section 3.4
Cooper's hawk	Section 3.4; Appendix D5	Northern harrier	Section 3.4
Double-crested cormorant (breeding)	Appendix D5	Great blue heron (breeding)	Section 3.4
Oregon vesper sparrow	Appendix D5	Great egret (breeding)	Section 3.4
Wigeon grass (not special-status)	Appendix D5	Snowy egret (breeding)	Section 3.4
Spiral wigeon grass (not special-status)	Not cited in botanical surveys or Draft EIS/EIR; not special-status.	Black-crowned night heron	Section 3.4
Vernal barley	Appendix D11. Presumed Absent. Historically present in the study area but not observed since 1901.	Western pony's-foot (not special-status)	Appendix D14
South coast branching phacelia	Section 3.4; Appendix D5	Burrowing owl	Section 3.4
California brown pelican	Section 3.4	Ferruginous hawk	Appendix D5
American peregrine falcon	Section 3.4	White-tailed kite	Section 3.4
Least Bell's vireo	Section 3.4	Belding's savannah sparrow	Section 3.4
Ridgway's rail	Section 3.4		

73. Four endangered species are not mentioned in this chart that is part of CDFW's comments: California Least Tern (Petitioners submitted a photo of breeding behavior on Salt Panne), Western Snowy Plover (Petitioners submitted photos of presence on Salt Panne), El Segundo Blue Butterfly (Petitioners submitted photo of presence at dune habitat of BWER – Ballona Wetlands Ecological Reserve), and Coastal California Gnatcatcher.

74. Numerous other special status species are not included in this chart, including Peregrine Falcon.

1 75. The Palmer’s Goldenbush was identified and discovered by naturalist Jonathan Coffin
2 and biologist/botanist Robert van de Hoek. At one point, Respondent calls it a “common species” –
3 which it is not. While not listed on the endangered species list, it is a rare species that is usually treated
4 by state botanists as one that requires protection of the habitat supporting such a species.

5 76. Respondent’s response to Petitioner van de Hoek’s comment about the presence of
6 Palmer’s Goldenbush is reflective of many of the sloppy and inaccurate responses made in the
7 preparation of this EIR. The quote relied on by Respondent to dismiss van de Hoek’s comments,
8 “someone else might have a different opinion,” was made by someone a journalist spoke with, but was
9 not a statement made by van de Hoek, who is a wildlife biologist and botanist, and who was previously
10 ranked as “qualified” as such by Respondent.

11 77. CDFW is the state agency charged with protecting rare species like this, and it was
12 incumbent upon them to have botanist specialists come out to the site to survey or even contact Robert
13 van de Hoek. CDFW would instead prefer to forge ahead with this project without specialists of any
14 kind reviewing this proposed project.

15 78. The EIR also should have been recirculated for comment following newly discovered
16 nesting and breeding behavior on both sides of the Ballona Creek levees – of endangered Least Bell’s
17 Vireo. The levees are planned to be demolished in these very areas where this species has been
18 documented. Erroneous flood risk standards used to design the project also became evident after the
19 draft EIR was circulated.

20 79. The US Fish & Wildlife Service – Dept of Interior stated:

21 Our comments in this letter focus on the proposed project. Our primary concerns
22 with the proposed project are: 1) the lack of clear objectives for the restoration; 2)
23 the large extent of temporal impacts to vegetated areas (about 336 acres for about
24 10 years) relative to the gain in aquatic/wetland habitats (about 61 acres); 3) the
25 increase in habitat fragmentation associated with placement of new flood control
26 levees/berms; 4) the increase in disturbance to wildlife associated with increased
27 recreation; and 5) uncertainty regarding the extent of maintenance required for
28 flood control and recreation infrastructure.

 In its previous comment letters, the Service stated its concerns regarding
increased habitat fragmentation associated with the proposed project. In general,
coastal estuaries consist of a large expanse of low gradient open space that allows
waterfowl and other wildlife to traverse unimpeded across the landscape and

1 between habitats. Currently, Area A is separated from Area B by the Ballona
2 Creek levee. The proposed project will relocate the existing levee to form a
3 meander-shaped channel and introduce a new series of levees and berms to
4 control water flows, provide flood protection, and protect existing habitats. We
5 remain concerned that the increased fragmentation will limit wildlife movement
6 and subject a greater proportion of the remaining wildlife within Ballona
7 Wetlands to noise and disruption associated with recreation and maintenance
8 activities along the new berms, lowering the overall quality of remaining habitat
9 from its current condition.

10 80. While Respondent explains its plans further about how the increase in tides will basically
11 flood the salt panne, there is not substantial evidence or even explanation about the questions the
12 USF&WS asks about the federally endangered California Least Tern, which Petitioners provided
13 photographic evidence for breeding behavior there, or impacts to significant wintering habitat for other
14 shorebirds, waterbirds and seabirds.

15 81. Respondent's responses to comments were also written before the discovery and
16 documentation of Least Bell's Vireo breeding and nesting behavior by this species on the north and
17 south levee areas of Ballona Creek, and yet Respondent failed to recirculate the EIR with this new
18 information.

19 82. Respondent's response on Page 2-89 states, "The proposed restoration includes re-
20 establishing high value rare coastal habitat known to require longer restoration periods to reach full
21 function. The performance criteria used for the restoration of fish, birds, and macroinvertebrates,
22 whereby at 8-10 years post-restoration, metrics such as species richness and abundance are anticipated
23 to exceed pre-Project conditions, consistent with realistic expectations for these resource types." This is
24 a conclusion not supported by substantial evidence.

25 83. Regarding flood risk standards, Respondent admits wrong ones were used for modeling
26 the entire proposed project, but then relies on them anyway.

27 84. Respondent falsely states, "Corps Engineers to-date have not proposed the need for
28 additional flood protection measures at Ballona Wetlands." In reality, Respondent argued with the US
Army Corps of Engineers for at least two years (with funder California Coastal Conservancy staff taking
the lead for them) about the need to have the project designed based on the more protective flood risk
standards. Then the Coastal Conservancy hired a lobbyist to attempt to persuade then U.S. Senator
Kamala Harris to get Congress to approve the old (less protective) standards.

1 85. US Fish & Wildlife Service commented, “there is no discussion about whether there will
2 be appropriate habitat conditions within the site to support the species after restoration is completed.”

3 86. CDFW’s response on page 2-92 was, “See Response AF1-29. Regarding the first specific
4 issue in the comment, as indicated in Draft EIS/EIR Section 2.2.2.6, Alternative 1: Monitoring and
5 Adaptive Management, a 10-year monitoring and adaptive management program would be implemented
6 as part of the Project to help ensure Lewis’ evening primrose would be replaced at a 1:1 ratio (see Draft
7 EIS/EIR Appendix B3 for more detail regarding adaptive management measures if performance goals
8 are not being met).”

9 87. The response does not refer to substantial evidence to back up the concerns raised by
10 USF&WS – but instead refers to adaptive management after the project is completed. USF&WS is
11 asking for assurance that appropriate habitat conditions to support the species is being considered as part
12 of the project plan, which it clearly is not. There is nothing in this EIR that explains what conditions are
13 needed by this species – cryptobiotic soils are needed for this species – which is mentioned in the letters
14 by Petitioner van de Hoek:

15 A little more about Cryptobiotic soils – clearly they do not have substantial evidence that
16 the substrate is going to be present when they would cover the habitat of the Lewis’
17 Evening Primrose – presumably they think it’s as easy as growing radishes in a home
18 vegetable garden?:

19 Cryptobiotic soil crusts are created by living organisms such as algae, cyanobacteria, and
20 fungi. The bacteria within the soil release a gelatinous material that binds soil particles
21 together in a dense matrix. The result is a hardened surface layer made up of both living
22 organisms and inorganic soil matter.

23 <https://www.nps.gov/glca/learn/nature/soils.htm>

24 Impacted areas may never fully recover. Under the best circumstances, a thin veneer of
25 biological soil may return in five to seven years. Mature crusts can take 50 years to
26 strengthen. Lichens and mosses may take hundreds of years to recover.

27 <https://www.nps.gov/articles/seug-soil-crust.htm>

28 88. There is also no substantial evidence in the record to support the use of pesticides and
poisons, which the project calls for.

89. There is also no substantial evidence in the record to support forcing bicyclists to undergo

1 time-consuming detours on meandering trails instead of the current direct paths for commuting, the
2 carbon impacts of which is also not addressed, as it will increase reliance on driving.

3 90. Thus, Respondent violated its duties to certify an EIR and adopt findings conforming to
4 the requirements of CEQA and the CEQA Guidelines. Accordingly, certification of the EIR must be set
5 aside.

6 91. Respondent is also threatening to proceed with piecemeal implementation of the project.
7 Implementation of the project will irreparably harm the environment in that the unaddressed significant
8 impacts described above will occur. A temporary restraining order and preliminary and permanent
9 injunctions should issue restraining Respondent from proceeding with the project.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiffs pray for judgment against Defendants as follows:

12 1. For a temporary restraining order and preliminary injunction restraining Defendants,
13 Respondents, and Real Parties in Interest from taking any action to carry out the project pending trial.

14 2. For a peremptory writ of mandate directing:

15 (a) Respondent to vacate and set aside its certification of the EIR for the project.

16 (b) Respondent to suspend all activity under the certification and project approval that
17 could result in any change or alteration in the physical environment until respondent has
18 taken actions that may be necessary to bring the project into compliance with CEQA.

19 (c) Respondent to prepare, circulate, and consider a new and legally adequate EIR and
20 otherwise to comply with CEQA in any subsequent action taken to approve the project.

21 3. For reasonable attorneys' fees as provided by, *inter alia*, Code Civ. Proc. § 1021.5, and
22 for costs of suit incurred herein; and

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

24
25 Dated: January 28, 2021

By: 

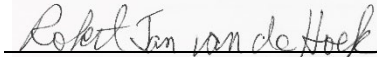
Bryan W. Pease, Esq.
Attorney for Petitioners

1 **VERIFICATION**

2 I, Robert Jan van de Hoek, am a Petitioner in the above-captioned action. I have read the
3 foregoing Petition for Writ of Mandate and am familiar with its contents. The same is true of my own
4 personal knowledge, except those matters alleged on information or belief, and as to those matters, I
5 believe them to be true.

6 I declare under penalty of perjury under the laws of California the foregoing is true and correct.

7
8 Dated: January 28, 2021


By: 
Robert Jan van de Hoek

9
10 **VERIFICATION**

11 I, Molly Basler, am a Petitioner in the above-captioned action. I have read the foregoing Petition
12 for Writ of Mandate and am familiar with its contents. The same is true of my own personal knowledge,
13 except those matters alleged on information or belief, and as to those matters, I believe them to be true.

14 I declare under penalty of perjury under the laws of California the foregoing is true and correct.

15
16 Dated: January 28, 2021

By: 
Molly Basler