

3/19/98

1 Stuart M. Flashman
2 5626 Ocean View Dr.
3 Oakland, CA 94618-1533
4 Telephone: (510) 652-5373
5 SBN 148396

6 Attorney for Petitioner and Plaintiff

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **BY AND FOR THE COUNTY OF ALAMEDA**
10 **EASTERN DIVISION**

11 CITIZENS FOR BALANCED GROWTH, a
12 California non-profit corporation,

13 Petitioner and Plaintiff,

14 vs.

15 ALAMEDA COUNTY FLOOD CONTROL
16 AND WATER CONSERVATION DISTRICT,
17 a public entity; BOARD OF DIRECTORS OF
18 ALAMEDA COUNTY FLOOD CONTROL
19 AND WATER CONSERVATION DISTRICT,
20 ZONE 7; BOARD OF SUPERVISORS OF
21 ALAMEDA COUNTY FLOOD CONTROL
22 AND WATER CONSERVATION DISTRICT;
23 and DOES 1-20 inclusive,

24 Respondents and Defendants

25 DUBLIN SAN

26 RAMON SERVICES DISTRICT, a public
27 entity, BERRENDA MESA WATER
28 DISTRICT, a public entity; SEMITROPIC
29 WATER STORAGE DISTRICT, a public
entity; STATE OF CALIFORNIA,
DEPARTMENT OF WATER RESOURCES;
SHAPELL INDUSTRIES, INC., a Delaware
Corporation; WINDEMERE RANCH
PARTNERS, a California limited partnership;
and DOES 21-40 inclusive,

Real Parties In Interest

No.

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

Petitioner and plaintiff CITIZENS FOR BALANCED GROWTH (hereinafter "CBG")
hereby alleges as follows:

INTRODUCTION

1. This action challenges the actions of respondents and defendants ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (hereinafter “DISTRICT”), BOARD OF DIRECTORS OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 (hereinafter “ZONE 7 BOARD”) and BOARD OF SUPERVISORS OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (hereinafter “SUPERVISORS”) (the above-referenced parties hereinafter collectively referred to as “RESPONDENTS”) in approving an escrow agreement and contract amendment with real party in interest DUBLIN SAN RAMON SERVICES DISTRICT (hereinafter “DSRSD”) to provide water service for the Dougherty Valley Project in unincorporated Contra Costa County. CBG alleges that these actions were illegal and improper in that they violate provisions of the Alameda County Flood Control and Water Conservation Act (hereinafter “the Act”) and are therefore *ultra vires*. CBG seeks this Court’s peremptory writ of mandate commanding DEFENDANTS to rescind said actions. CBG also seeks a permanent injunction, pursuant to Code of Civil Procedure §526a, prohibiting DEFENDANTS from undertaking any similar *ultra vires* actions in the future, and this Court’s declaration as to the proper scope of actions for DEFENDANTS in selling or supplying water from the DISTRICT to areas outside of the DISTRICT’s boundaries.

2. CBG seeks this relief as a private attorney general under Code of Civil Procedure §1021.5 to protect the right of the DISTRICT's constituents, and specifically the right of the constituents of Zone 7 of the DISTRICT, to an adequate and reliable water supply as provided for under the ACT. Neither CBG, its directors, nor its members will receive any special benefits from this action beyond those it will provide to the general public. If successful, CBG intends to seek recovery of its reasonable attorneys' fees under C.C.P. §1021.5.

PARTIES

3. Petitioner and Plaintiff CITIZENS FOR BALANCED GROWTH is a nonprofit public benefit corporation organized and existing under the laws of the State of California. CBG's members are residents, citizens, voters, taxpayers and property owners in Alameda County, and specifically in Zone 7 of the DISTRICT. CBG's members, as ratepayers of Zone 7 of the DISTRICT regularly pay the DISTRICT's rates and charges. CBG exists for the purpose of promoting balanced growth within the area of the cities of Livermore, Dublin and Pleasanton and the surrounding unincorporated area of Alameda County, all of which is within the jurisdiction of the DISTRICT. Its members are directly and beneficially interested in the DISTRICT and its water supply, which are at issue in this action.

4. CBG and its members are also directly and beneficially interested in how the DISTRICT manages its water supply, and specifically the groundwater basin underlying Zone 7 of the DISTRICT. Additionally, CBG and its members are directly and beneficially interested as citizens and taxpayers in ensuring that the DISTRICT acts properly in expending public funds. Finally, CBG and its members are directly and beneficially interested in the performance by the DISTRICT's officers and officials of their duty to comply with the requirements of the laws of California, and in particular those laws governing the DISTRICT.

5. Respondent and defendant Alameda County Flood Control and Water Conservation District is a duly constituted public entity organized and existing under and by virtue of the Constitution and laws of the State of California, and specifically under the ACT. Under the ACT, the DISTRICT is divided into zones. One of these zones, Zone 7, is subject to specific requirements specified by §55-36 of the ACT. The DISTRICT is responsible for controlling and conserving for beneficial use all water contained in or flowing into the DISTRICT. The DISTRICT is specifically responsible for complying with all provisions of the ACT, as well as with all other applicable statutes and regulations.

6. Respondent and defendant BOARD OF SUPERVISORS OF THE ALAMEDA FLOOD CONTROL AND WATER CONSERVATION DISTRICT is the governing board of the DISTRICT. As such, it is responsible for all major contracts and policy decisions of the

1 DISTRICT. CBG is informed and believes that the SUPERVISORS failed to prevent the action
2 of the ZONE 7 BOARD in approving the escrow agreement and contract amendment that are the
3 subject of this action. The SUPERVISORS, when acting on DISTRICT matters, are required to
4 follow all applicable provisions and requirements of the ACT.

5 7. Respondent and defendant BOARD OF DIRECTORS OF THE ALAMEDA COUNTY
6 FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 are the governing
7 board of Zone 7 of the DISTRICT, as mandated by §55-36 of the ACT. As such, they are
8 responsible for considering and approving all policy actions and contracts to be undertaken by the
9 DISTRICT within Zone 7. Specifically, the ZONE 7 BOARD was responsible for approving the
10 escrow agreement and contract amendment that are the subject of this action. The ZONE 7
11 BOARD is required to follow all applicable provisions and requirements of the ACT.

12 8. The true names and capacities of DOES 1-20 are unknown to CBG at this time; however
13 CBG allege on information and belief that each party named as DOE is responsible for the acts
14 and omissions of each of the other respondents and defendants. Therefore CBG sues such Parties
15 by such fictitious names, and will ask leave of the Court to amend this Petition and Complaint by
16 inserting the true names and capacities of said Does when ascertained.

17 9. Real party in interest DUBLIN SAN RAMON SERVICES DISTRICT is a duly constituted
18 public entity organized and existing under and by virtue of the Constitution and laws of the State
19 of California, and specifically under the Community Services District Law (Government Code
20 §61000 *et seq.*). It is responsible for providing sewer service to areas within its jurisdiction,
21 including portions of both Alameda and Contra Costa Counties. It also provides water service
22 within areas of Alameda County, and one pre-existing hose bib within Contra Costa County. It
23 has agreed to provide water service to the Dougherty Valley Project in unincorporated Contra
24 Costa County. DSRSD entered into an escrow agreement with the DISTRICT and specifically
25 Zone 7 of the DISTRICT for an amendment to its contract with the DISTRICT that would
26 provide for water service to the Dougherty Valley Project from the DISTRICT's water supply.

27 10. Real party in interest BERRENDA MESA WATER DISTRICT (hereinafter "BERRENDA
28 MESA") is a duly constituted public entity organized and existing under and by virtue of the
29 Constitution and laws of the State of California, and specifically under the provisions of the

1 California Water Code. BERRENDA MESA has contracted with the DISTRICT to provide it
2 with water out of its State Water Project entitlements for use in the Dougherty Valley Project.

3 11. Real party in interest SEMITROPIC WATER STORAGE DISTRICT (hereinafter
4 "SEMITROPIC") is a duly constituted public entity organized and existing under and by virtue of
5 the Constitution and laws of the State of California, and specifically under the provisions of the
6 California Water Storage District Law. (Water Code §39000 *et seq.*) SEMITROPIC has
7 contracted with the DISTRICT to store water it obtains from BERRENDA MESA for eventual
8 use to supply the Dougherty Valley Project.

9 12. Real party in interest STATE OF CALIFORNIA, DEPARTMENT OF WATER
10 RESOURCES (hereinafter "DWR") is a division of the State of California. DWR is the owner
11 and operator of the California State Water Project. DWR and the DISTRICT have entered into
12 an amendment to their contract for water deliveries providing for the addition of 7,000 acre feet
13 to the DISTRICT's entitlements reflecting the transfer of entitlements from BERRENDA MESA.

14 13. CBG is informed and believes, and on that basis alleges, that real party in interest
15 SHAPELL INDUSTRIES, INC. (hereinafter "SHAPELL") is a Delaware Corporation.
16 SHAPELL is one of the developers of the Dougherty Valley Project. Along with real party in
17 interest WINDEMERE RANCH PARTNERS, Shapell has agreed to pay for the water to be
18 provided by BERRENDA MESA, the DISTRICT, and DSRSD for the Dougherty Valley Project.

19 14. CBG is informed and believes, and on that basis alleges, that real party in interest
20 WINDEMERE RANCH PARTNERS (hereinafter "WINDEMERE") is a California limited
21 partnership. Along with SHAPELL, WINDEMERE is a developer of the Dougherty Valley
22 Project and has agreed to pay for the water to be provided by BERRENDA MESA, the
23 DISTRICT, and DSRSD for the Dougherty Valley Project.

24 15. The true names and capacities of DOES 21-40 are unknown to CBG at this time; however
25 CBG allege on information and belief that each such party named as DOE has some interest in the
26 subject matter of this action. Therefore CBG sues such Parties by such fictitious names, and will
27 ask leave of the Court to amend this Petition and Complaint by inserting the true names and
28 capacities of said Does when ascertained.

FACTS OF THE CASE

16. In 1992, Contra Costa County approved a general plan amendment and specific plan to allow development of the 11,000 unit Dougherty Valley Project in the unincorporated area to the east of the City of San Ramon. In approving the project, Contra Costa County designated the East Bay Municipal Utilities District ("EBMUD") as the preferred service provider for water service to the project, and indicated its intent to seek annexation of the project to EBMUD. EBMUD sued Contra Costa County (Contra Costa Superior Court, Case No. C93-00235), alleging that the project approval violated the California Environmental Quality Act and was inconsistent with the County's general plan. EBMUD won at the trial court. While the decision was under appeal, the parties reached a settlement. The settlement provided that SHAPELL and WINDEMERE would use their best efforts to obtain an alternative water supplier for the project. It specifically designated DSRSD as the preferred water supplier. If those efforts proved unsuccessful and the project was still without a water supplier in the year 2002, EBMUD agreed to provide water to the project and not to oppose annexation of the project to its service area.

17. Subsequent to that agreement, DSRSD has preliminarily determined to provide water service to the Dougherty Valley, dependent on its ability to obtain water through a transfer of state water project entitlements from BERREND A MESA. In support of that decision, DSRSD has conducted several developer-funded studies to determine the feasibility and optimal plan for providing water service to the Dougherty Valley Project. In addition, in 1995 BERREND A MESA prepared and in 1996 it certified an Environmental Impact Report ("EIR") for the transfer of State Water Project entitlements to serve Dougherty Valley. Those studies identified provision of water through a contractual arrangement with Zone 7 of the DISTRICT as a preferred option. As part of several of the options, Zone 7 of the DISTRICT would also enter into a contract of SEMITROPIC to store water obtained from BERREND A MESA pending its eventual transfer to DSRSD for use in Dougherty Valley. Some of the water transferred from BERREND A MESA would also be stored in the groundwater basin underlying Zone 7 of the DISTRICT. All of the water to be provided to the Dougherty Valley Project through DSRSD would be transferred through the DISTRICT using facilities the DISTRICT would construct for this purpose.

1 18. In September 1996, Zone 7 of the DISTRICT released a Financial, Institutional, and
2 Operational Analysis of Options for Providing Water to Dougherty Valley ("FIO"). That report,
3 also funded by the Dougherty Valley developers, discussed the implications of the various
4 available options for using BERRENDA MESA's water entitlements to supply the Dougherty
5 Valley Project. It specifically considered the legal obstacles to having Zone 7 provide water to an
6 area outside of the DISTRICT. It included, as an appendix, an opinion from the Alameda County
7 Counsel's office indicating that the DISTRICT had legal authority to provide water to serve areas
8 outside of the DISTRICT, so long as the DISTRICT'S water supply was not reduced thereby.

9 19. In September 1997 Zone 7 of the DISTRICT released a Draft Supplemental EIR ("SEIR")
10 for the transfer of water entitlements for use in Dougherty Valley. In December 1997, Zone 7 of
11 the DISTRICT released the Final SEIR.

12 20. On or about January 7, 1998, the ZONE 7 BOARD held a public hearing on the Final SEIR
13 and voted to certify the SEIR.

14 21. On or about January 28, 1998, the ZONE 7 BOARD held a public hearing on the proposed
15 contracts and escrow agreement. Members of the public, including CBG and some of its
16 members, testified in opposition to the approval. They specifically raised the issue of the violation
17 of the ACT. Nevertheless, the ZONE 7 BOARD voted 6-1 to authorize the Zone 7 Board
18 President to sign five agreements approving and implementing the contracts for delivery of water
19 by Zone 7 for the Dougherty Valley Project.

20 **GENERAL ALLEGATIONS**

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22 22. CBG has performed any and all conditions precedent to the filing of this petition and
23 complaint and has exhausted all administrative remedies.

24 23. CBG and its members have no plain speedy or adequate remedy in the ordinary course of
25 the law, in that if the DISTRICT is allowed to implement its contract with DSRSD to supply
26 water to the Dougherty Valley Project, CBG, its members and the residents and ratepayers of the
27 DISTRICT will be irreparably harmed through the improper diversion of Zone 7's water supply,
28 and specifically water within the groundwater basin underlying Zone 7, to areas outside of the
29 DISTRICT in disregard of the terms of the ACT and without proper terms and limitations to

1 protect the DISTRICT and its water supply, as specified by the ACT. As a result, CBG, its
2 members, Zone 7 ratepayers, and potentially other residents of the DISTRICT will be deprived of
3 the reliable and adequate water supply that was the purpose of the ACT. In addition, DISTRICT
4 funds will be improperly expended for purposes that are beyond the scope of the DISTRICT's
5 statutory authority. These are harms for which money damages or other legal remedy could not
6 provide adequate compensation.

7 8 **CHARGING ALLEGATIONS**

9 **FIRST CAUSE OF ACTION - VIOLATION OF THE ACT (C.C.P. §1085);** 10 **IMPROPER APPROVAL OF CONTRACT IN VIOLATION OF THE ACT.**

11 24. CBG hereby realleges Paragraphs 1-23 inclusive and incorporates them herein by this
12 reference.

13 25. The DISTRICT, its SUPERVISORS, and the ZONE 7 BOARD are under obligation to
14 take no action that violates the provisions of the ACT.

15 26. In approving the amendment to the DISTRICT's contract with DSRSD to provide water
16 service to the Dougherty Valley Project, and the supporting escrow agreement, or allowing those
17 approvals to occur, the DISTRICT, its SUPERVISORS and the ZONE 7 BOARD violated the
18 provisions of the ACT. Specifically:

19 27. The contract amendment and escrow agreement violate the objects and purpose of the
20 DISTRICT, as set forth in §55-4 of the ACT by providing for the exportation of water from the
21 DISTRICT and failing to prevent the diminution of the water supply in the DISTRICT.

22 28. The contract amendment and escrow agreement violate the provisions of §55-5(6) in that
23 they provide for the transport and sale for use outside of the DISTRICT of water that flows in a
24 watershed of the DISTRICT without reserving the right and duty to use such water to replenish
25 the water levels of the gravel beds within the DISTRICT.

26 29. Because said contract amendment and escrow agreement violate the provisions of the ACT,
27 their approval by the ZONE 7 BOARD was *ultra vires* and, as such, violated the duty of the the
28 ZONE 7 BOARD, and the DISTRICT to abide by the provisions of their enabling statute. It is
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1 therefore appropriate that a writ of mandate issue ordering the DISTRICT and the ZONE 7
2 BOARD to rescind their improper and *ultra vires* actions in approving said contract amendment
3 and escrow agreement.

4 **SECOND CAUSE OF ACTION - INJUNCTIVE RELIEF (C.C.P. §526a)**

5 30. CBG hereby realleges Paragraphs 1-29 inclusive and incorporates them herein by this
6 reference.

7 31. Code of Civil Procedure §526a allows any resident or corporate taxpayer to maintain an
8 action against a public agency's officers or agents to enjoin the illegal expenditure of the agency's
9 funds or injury to the property of the agency.

10 32. The DISTRICT, as a public entity established under authority of the State of California, and
11 as a co-extensive alter ego of Alameda County, is subject to the provisions of C.C.P. §526a.

12 33. The actions of the DISTRICT, its SUPERVISORS, and the ZONE 7 BOARD in approving
13 the contract amendment and escrow agreement for sale of water to DSRSD, or allowing said
14 approvals to occur, are, as alleged above, illegal. They will also cause damage to the water
15 supply of Zone 7 by reducing the adequacy and reliability of said water supply.

16 34. Therefore, CBG is entitled to a permanent injunction against the DISTRICT, its
17 SUPERVISORS, and the ZONE 7 BOARD prohibiting them from undertaking or allowing any
18 further violations of the ACT, as set forth hereinabove.
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20 **THIRD CAUSE OF ACTION - DECLARATORY RELIEF (C.C.P. §1060)**

21 35. CBG hereby realleges Paragraphs 1-34 inclusive and incorporates them herein by this
22 reference.

23 36. CBG hereby seeks this Court's declaration of the relative rights of the parties herein
24 concerning the transport or sale of water belonging to the DISTRICT, and specifically to Zone 7
25 of the DISTRICT, for use outside of the DISTRICT's boundaries.
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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, petitioner and plaintiff Citizens for Balanced Growth pray for relief as
3 follows:

- 4 1. For this Court's peremptory writ of mandate directing RESPONDENTS to vacate and set
5 aside their determinations approving the contract amendment and escrow agreement with
6 DSRSD, and remanding said proceedings to RESPONDENTS for further proceedings in
7 accordance with this Court's judgment;
- 8 2. For this Court's permanent injunction prohibiting RESPONDENTS from contracting or
9 otherwise allowing for the transport and/or sale of the DISTRICT's water for use outside of the
10 DISTRICT's boundaries in violation of the provisions of the ACT;
- 11 3. For this Court's declaration that the sale or transportation of water belonging to the
12 DISTRICT, or any zone thereof, for use outside of the DISTRICT's boundaries violates the
13 objects and purposes of the ACT, as well as specific provisions of the ACT;
- 14 4. For an award of reasonable attorney's fees under Code of Civil Procedure section 1021.5 or
15 as otherwise authorized by law;
- 16 5. For costs of suit incurred herein; and
- 17 6. For such other and further equitable or legal relief as the Court deems just and proper.

18 Dated: March 19, 1998

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20 Stuart M. Flashman
21 Attorney for Petitioner and Plaintiff
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VERIFICATION

I am the Chief Executive Officer of petitioner and plaintiff Citizens for Balanced Growth and am authorized to execute this verification on its behalf. I have read the foregoing Petition and Complaint and am familiar with the matters alleged therein. All facts alleged in the petition are true of my own personal knowledge except as to those allegations made on information and belief; and as to those, I am informed and believe they are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on March 19, 1998 at Livermore, California.

Donald G. Miller