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Attorneys for Petitioner
JAMULIANS AGAINST THE CASINO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

JAMULIANS AGAINST THE CASINO,
Petitioner/Plaintiff,

v.

CALIFORNIA WILDLIFE CONSERVATION BOARD,
CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE, and DOES I-XX,

Respondents,

JAMUL INDIAN VILLAGE, and DOES XXI-L,
inclusive,

Real Parties in Interest.

Civ. No.

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

CEQA CASE

Public Resources Code
Section 21000

Petitioner/Plaintiff JAMULIANS AGAINST THE CASINO hereby petitions the Court for a writ of mandate and declaratory and injunctive relief against respondents CALIFORNIA WILDLIFE CONSERVATION BOARD ("WCB"), CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ("DFW") and DOES I-XX, and by this Verified Petition alleges as follows:

INTRODUCTION

1. This is a public interest citizen suit to enforce the California Environmental Quality Act ("CEQA"), Public Resources Code sections 21000, et seq. and the Fish and Game Code. Respondent California Wildlife Conservation Board, acting as a responsible agency under CEQA, granted a 1.88-acre permanent easement on the Rancho Jamul Ecological Reserve to enable construction of a proposed

1 gaming project ("Project") despite the fact that the CEQA lead agency, the California Department of
2 Transportation ("Caltrans"), has not completed its Environmental Impact Report ("EIR") for the Project
3 under CEQA. CEQA requires responsible agencies to await the lead agency's EIR before deciding
4 whether to approve the project. During operation, the gaming Project will harm the adjacent Rancho
5 Jamul Ecological Reserve and the wildlife it was established to protect through noise, light pollution, and
6 wildlife vehicle kills as it adds 9,000 vehicle trips daily onto the nearby State Route 94 ("SR 94") that
7 runs along four miles of the eastern boundary of the Reserve. WCB's discretionary approval of the
8 permanent easement is an essential step in the development of the gaming Project, as without the
9 easement, JIV's planned casino and underground parking garage would lack the lateral and subjacent
10 support necessary for the contemplated construction. Thus, by approving the permanent easement, WCB
11 authorized development "that may cause either a direct physical change in the environment or a
12 reasonably foreseeable indirect physical change in the environment," triggering CEQA review under
13 Public Resources Code sections 21065 and 21080. WCB violated CEQA by improperly approving the
14 permanent easement without first discharging its CEQA duties as a responsible agency and conducting
15 required environmental review based on the lead agency's EIR.

16 2. WCB further sidestepped its CEQA duties by filing a Notice of Exemption ("NOE") that
17 falsely claimed that the Project is exempt under one of the CEQA Guidelines' categorical exemptions,
18 codified at 14 C.C.R. section 15304 ("Guidelines section 15304"). Contrary to WCB's NOE, the
19 permanent easement allows more than a mere "soil nail" earth retaining system. Rather, it enables a
20 203,000-square foot gaming Project that would harm the adjacent Rancho Jamul Ecological Reserve and
21 its wildlife. By precipitously approving this easement while Caltrans' EIR for the Project is still being
22 prepared, WCB subverted the CEQA process.

23 3. The impacts of this massive casino on the wildlife that the Rancho Jamul Ecological
24 Reserve was set aside to protect were known to WCB, as the California Department of Fish and Game
25 ("DFG") – the predecessor to DFW¹ – provided comments pointing out the casino's deadly effects on the
26 Reserve's wildlife in April 2012. The casino will kill or displace large numbers of the wildlife at the
27

28

¹ This name change was effective January 1, 2013. Fish & Game Code §§ 37, 700; Stats. 2012,
ch. 559, §§ 5, 8, p. 90.

1 Rancho Jamul Ecological Reserve through increased traffic-related death, light pollution, noise pollution,
2 and other adverse impacts. WCB, as a responsible agency, must analyze these environmental effects
3 under CEQA before approving the Project. Petitioner therefore seeks a peremptory writ of mandate and
4 declaratory and injunctive relief invalidating the permanent easement in its entirety and requiring WCB to
5 comply with the requirements of CEQA before considering whether to grant the permanent easement.

6 4. Although the Jamul Indian Village ("JIV") has an interest in this litigation because it is the
7 recipient of the permanent easement, JIV is not an indispensable party and therefore need not be joined if
8 it fails to waive sovereign immunity. WCB's interest in defending the legality of its approvals of the
9 grant of the permanent easement duplicates that of JIV, and JIV's interest will thus be adequately
10 defended by WCB. If JIV were to refuse to waive sovereign immunity and thus avoid joinder, petitioner
11 would have no available recourse against WCB to enforce the environmental laws of this State unless JIV
12 were deemed dispensable.

13 JURISDICTION

14 5. The paragraphs set forth above are realleged and incorporated herein by reference

15 6. This Verified Petition for Writ of Mandate is authorized by Code of Civil Procedure
16 section 1085 et seq. and Public Resources Code sections 21168 and 21168.5.

17 7. Pursuant to Code of Civil Procedure section 388 and Public Resources Code sections
18 21167.7, petitioner is serving the California Attorney General with a copy of this Verified Petition and
19 Complaint concurrently with its filing of this action, and consistent with Public Resources Code section
20 21167.5, petitioner has served respondents with notice of this suit.

21 PARTIES

22 8. The paragraphs set forth above are realleged and incorporated herein by reference.

23 9. Petitioner JAMULIANS AGAINST THE CASINO ("petitioner") is a non-profit
24 organization of citizens living in and around Jamul, California, dedicated to preserving the small-town,
25 rural lifestyle of its community. Petitioner has actively monitored and commented on JIV's proposed
26 development of a major casino on its property, and would have provided comments upon WCB's
27 approval of a permanent easement, had any public notice of the approval been provided. Petitioner's
28 members use and serve as volunteers at the Rancho Jamul Ecological Reserve, and are deeply concerned

1 about the casino's impacts on the sensitive habitat and wildlife that the Rancho Jamul Ecological Reserve
2 protects. Petitioner and its members have commented on and objected to the underlying casino
3 construction and its environmental impacts at every opportunity.

4 10. Respondent CALIFORNIA WILDLIFE CONSERVATION BOARD ("WCB") is the state
5 agency that granted a permanent easement of 1.88 acres to JIV for its "soil nail" earth retaining system,
6 and was subject to CEQA's requirements at the time it did so, but failed to abide by those requirements.
7 Fish and Game Code section 1320 places WCB "in the [D]epartment" of Fish and Wildlife ("DFW").
8 Fish and Game Code section 1348 grants WCB the authority to perform such real-estate transactions on
9 behalf of DFW -- or to authorize DFW to perform such transactions -- to further DFW's and WCB's
10 wildlife conservation purposes. WCB is subject to the regulations promulgated by DFW and the
11 California Fish and Game Commission ("Commission").

12 11. Respondent CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE ("DFW") is the
13 state agency that owns and operates the Rancho Jamul Ecological Reserve. The Director of DFW is the
14 Chairman of WCB. DFW is tasked with protecting California's fish and wildlife resources, including its
15 ecological reserves, pursuant to Fish and Game Code sections 711.7(a) and 1580, et seq.

16 12. Petitioner is unaware of the true names and capacities of respondents DOES I-XX, and
17 sues such respondents herein by fictitious names. Petitioner is informed and believes, and based on such
18 information and belief alleges, that the fictitiously named respondents are also responsible, in whole or in
19 part, for the approval, execution, or implementation of the permanent easement. When the true identities
20 and capacities of these respondents have been determined, petitioner will, with leave of the Court if
21 necessary, amend this Complaint to insert such identities and capacities.

22 13. Real party in interest JAMUL INDIAN VILLAGE purports to be a federally-recognized
23 Indian tribe organized under the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461 et seq. ("IRA").
24 JIV seeks to construct the gaming Project on its alleged trust lands, and accordingly sought a permanent
25 easement from WCB to install its soil-nail earth retaining system to construct a 203,000 square foot
26 gaming complex. WCB considered and approved JIV's request for a permanent easement without notice
27 to petitioner or the public.

28 14. Petitioner is unaware of the true names and capacities of real parties in interest DOES

1 XXI-L, and sues such real parties in interest herein by fictitious names. Petitioner is informed and
2 believes, and based on such information and belief alleges, that the fictitiously named real parties in
3 interest have a financial or other beneficial interest in the permanent easement. When the true identities
4 and capacities of these real parties in interest have been determined, petitioner will, with leave of the
5 Court if necessary, amend this Complaint to insert such identities and capacities.

6 LEGAL BACKGROUND

7 15. The paragraphs set forth above are realleged and incorporated herein by reference.

8 16. CEQA is California's primary statutory mandate for environmental protection. It applies
9 to all state and local agencies, and requires them to "first identify the [significant] environmental effects
10 of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation
11 measures or through the selection of feasible alternatives." *Sierra Club v. State Board of Forestry* (1994)
12 7 Cal.4th 1215, 1233. Its most important substantive mandate requires "public agencies to deny approval
13 of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can
14 substantially lessen such effects." *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.
15 CEQA's mandate for detailed environmental review "ensures that members of the [governmental
16 decision-making body] will fully consider the information necessary to render decisions that intelligently
17 take into account the environmental consequences" of the proposed action. *Mountain Lion Foundation v.*
18 *Fish and Game Commission* (1997) 16 Cal.4th 105, 133; Pub. Res. Code §§ 21080.5(d)(2)(D),
19 21091(d)(2); Guidelines § 15088. The CEQA process thus "protects not only the environment but also
20 informed self-government." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553,
21 564.

22 17. All California "public agencies" must comply with CEQA when they approve
23 discretionary projects. Pub. Res. Code § 21080(a). "Public agency" includes "any state agency." Pub.
24 Res. Code § 21063. WCB and DFW are state agencies subject to CEQA. *Id.*; Guidelines § 15383.

25 18. A proposed governmental action requires environmental review under CEQA if (1) the
26 agency is contemplating an "approval" of an action as defined by Guidelines section 15352, (2) the
27 subject matter of the contemplated approval constitutes a "project" under Public Resources Code section
28 21065 and Guidelines section 15378(a), and (3) the project to be approved does not fall within either a

1 statutory exemption created by the Legislature under Public Resources Code section 21080(b) and
2 recognized under Guidelines sections 15260-15285, or a categorical exemption in the Guidelines as
3 promulgated by the California Resources Agency pursuant to Public Resources Code section 21084(a)
4 and Guidelines sections 15061(b)(2), 15300-15333 and 15354. Even if a project is subject to a
5 categorical exemption, it is subject to CEQA if it falls within an exception to the categorical exemptions
6 as provided under Public Resources Code section 21084 and Guidelines section 15300.2. If a project is
7 not exempted by statute or regulation, then it can be exempt from CEQA *only if* "it can be seen with
8 certainty that there is *no possibility* that the activity in question may have a significant effect on the
9 environment." Guidelines § 15061(b)(3) (the "common sense" exemption), emphasis added.

10 19. CEQA establishes a clear process for projects involving approvals by multiple agencies
11 like JIV's casino. In such a situation, one agency is designated the "lead agency" and is "responsible for
12 preparing an EIR or negative declaration for the project." Guidelines § 15050(a). Generally, the lead
13 agency is the first agency to act upon a project. *Citizens Task Force on Sohio v. Board of Harbor*
14 *Commissioners* (1979) 23 Cal.3d 812, 814. All other agencies are "responsible agencies." See
15 Guidelines § 15381. The lead agency must consult with responsible agencies throughout the EIR process,
16 from before the issuance of a notice of preparation through the completion of the EIR; responsible
17 agencies document their concerns about impacts to resources within their jurisdiction. Pub. Res. Code §§
18 21080.3, 21080.4(a)-(b), 21104(a). Afterward, the "responsible agency must consider the environmental
19 effects of the project as shown in the EIR or negative declaration." Guidelines § 15096(f); *see also*
20 Guidelines § 15050(b) ("Each responsible agency shall certify that its decisionmaking body reviewed and
21 considered the information contained in the EIR or negative declaration on the project").

22 20. In applying these CEQA procedures, agencies may not segment a project to avoid
23 preparing an EIR on the entirety, or whole, of the project. Guidelines § 15378(a), (c), (d). CEQA's
24 "requirements cannot be avoided by chopping up proposed projects into bite-size pieces which,
25 individually considered, might be found to have no significant effect on the environment or to be only
26 ministerial." *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726.

27 **FACTUAL BACKGROUND**

28 21. The paragraphs set forth above are realleged and incorporated herein by reference.

1 22. WCB and DFW each have a role to play in managing the Rancho Jamul Ecological
2 Reserve. The state began acquiring land for the Rancho Jamul Ecological Reserve in 1998, and continues
3 to acquire land now. The Commission declared the land to be the Rancho Jamul Ecological Reserve, and
4 delegated to DFW the authority to administer and maintain the lands. 14 C.C.R. § 630, 630(a),
5 630(b)(99). Thus DFW has the authority and responsibility to maintain the Rancho Jamul Ecological
6 Reserve in a manner that will “protect threatened or endangered native plants, wildlife, or aquatic
7 organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous
8 natural gene pools for the future use of mankind.” Fish & Game Code § 1580; 14 C.C.R § 630. WCB is
9 tasked with the acquisition and sale of real-property interests on behalf of DFW. Fish & Game Code §
10 1348.

11 23. JIV’s claimed reservation land consists of one parcel approximately 4.6 acres in size
12 located south of the community of Jamul, west of SR 94 and approximately 20 miles east of downtown
13 San Diego. SR 94 abuts approximately 60 feet of the northeastern edge of a different parcel that is
14 approximately 1.5 acres and contains the road that provides access from the Reservation to SR 94. The
15 Rancho Jamul Ecological Reserve abuts the southern edge of both parcels. Directly to the north of these
16 parcels is land that is administered as part of the San Diego County Multiple Species Conservation
17 Program (“MSCP”). DFW is an approving agency for the MSCP, and must weigh in on any amendments
18 to that plan.

19 24. JIV proposes to build and operate a three-story gaming and entertainment complex of
20 approximately 203,000 square feet featuring at least 1,700 slot machines, 50 live table games including
21 poker, and multiple restaurants, bars and lounges. The three-story casino complex would be built on top
22 of an eight-story underground parking structure with approximately 1,900 spaces. A second surface
23 parking lot would have approximately 95 spaces. The facility would employ approximately 1,600
24 employees. The casino complex would generate approximately 9,000 average daily vehicular trips on SR
25 94.

26 25. Local wildlife officials with DFW and the United States Fish and Wildlife Service
27 (“FWS”) informed JIV of their concerns regarding the casino’s impacts on the Rancho Jamul Ecological
28 Reserve and the MSCP lands surrounding JIV in April 2012. DFW raised several major concerns about

1 adverse impacts on Rancho Jamul Ecological Preserve and MSCP lands, including:

- 2 (a) A potential increase in wildlife mortality resulting from the casino Project-related
- 3 increase in traffic, in both directions along SR 94, particularly along the segment of
- 4 SR 94 between Proctor Valley Road/Jefferson Road and Otay Lakes Road;
- 5 (b) The potential impacts on the Rancho Jamul Ecological Reserve from excessive
- 6 nighttime casino lighting;
- 7 (c) The potential to attract bird species from the Rancho Jamul Ecological Reserve
- 8 towards the casino, causing bird-strikes on windows;
- 9 (d) The potential fragmentation of habitat; and
- 10 (e) The potential incursion by casino patrons into the Reserve.

11 FWS likewise raised concerns that the casino Project could adversely impact the Rancho Jamul
12 Ecological Reserve because of lighting, noise, increased wildlife mortality from traffic, potential
13 increases in human activity, and the spread of exotic species.

14 26. On information and belief, on or about June 11, 2014, WCB purported to approve a
15 permanent easement for JIV's gaming Project.

16 27. On or about June 11, 2014, WCB filed its NOE for the Project with the State of California
17 CEQA Clearinghouse purportedly under Guidelines section 15304. WCB's NOE states that it has
18 determined that the "Project is a minor alteration to land which will not involve the removal of healthy,
19 mature, scenic trees or other habitat (15304). There will be no modification to surface overlying the
20 easement and no adverse impacts to the easement area."

21 28. WCB improperly acted as a lead agency in issuing the NOE, as Caltrans has already
22 assumed the lead-agency mantle and issued a Notice of Preparation for an EIR associated with JIV's
23 gaming Project. In fact, DFW, through DFG, has admitted it is a responsible agency for JIV's casino
24 Project.

25 29. Prior to approving the permanent easement, WCB did not prepare an initial study, a
26 negative declaration, a mitigated negative declaration, or an EIR, despite the fact that the permanent
27 easement is subject to CEQA and will have a demonstrably adverse impact on the environment. Thus
28 WCB violated CEQA.

30. Respondents also violated the Fish and Game Code because they failed to protect the Rancho Jamul Ecological Reserve.

FIRST CAUSE OF ACTION

(Violation of CEQA)

(Alleged by Petitioner Against All Respondents and Real Parties in Interest)

31. The paragraphs set forth above are realleged and incorporated herein by reference.

32. Petitioner brings this First Cause of Action pursuant to Public Resources Code sections 21168 and/or 21168.5, on the grounds that WCB failed to act in accordance with law, and committed a prejudicial abuse of discretion, by considering and approving the permanent easement without undertaking the review required by CEQA.

33. WCB is a "state agency" within the meaning of CEQA. Pub. Res. Code § 21063; Guidelines § 15383. CEQA requires state agencies to conduct environmental review prior to approving any discretionary project that may have a significant impact on the environment. Pub. Res. Code §§ 21080(a), 21100; Guidelines § 15004(a). WCB's approval of the permanent easement is a discretionary approval. Guidelines § 15357.

34. Under CEQA, the term “project” means the “whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Guidelines § 15378(a). The term “project” refers to the “activity which is being approved and which may be subject to several discretionary approvals by government agencies” and not the governmental approvals themselves. *Id.* § 15378(c). WCB’s grant of the permanent easement is subject to CEQA and the environmental analysis required under CEQA must encompass the “whole” of the Project including the construction *and* operation of the casino, which is enabled by the grant of the easement.

35. "Approval" of a project, for purposes of CEQA, means a decision by the agency "which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." *Id.* § 15352(a). WCB's consideration and approval of the permanent easement for the casino constitutes the "approval of a project" under CEQA. If there is any possibility that a discretionary project being approved by a state agency may cause a significant effect on the environment, directly or indirectly,

1 the activity must comply with CEQA. Pub. Res. Code §§ 21065, 21080(a), 21100. Here, the Project will
2 result in a number of “reasonably foreseeable indirect physical change[s] in the environment,” including
3 but not limited to adverse effects upon the flora and fauna at Rancho Jamul Ecological Reserve.

4 36. Caltrans is the lead agency for the Project. It issued a Notice of Preparation of an EIR and
5 was the first agency to act upon JIV’s proposed casino Project. In 2012, DFG – now DFW – admitted
6 that it was a responsible agency for JIV’s casino Project. It also expressed concern about the
7 environmental impacts of the Project. Yet WCB failed to follow the CEQA procedure for a responsible
8 agency. Rather than “review[] and consider[]” the information contained in Caltrans’ EIR prior to
9 approval as CEQA requires (Guidelines §§ 15050(b), 15096(f)), WCB issued a Notice of Exemption
10 purporting to approve the easement without even waiting for Caltrans’ EIR to be finished. WCB thereby
11 violated CEQA by segmenting the Project and failing to discharge its duties as a responsible agency.

12 37. WCB claims that the Project is exempt from CEQA under the categorical exemption for
13 minor alterations to land. Guidelines § 15304. But this exemption is inapplicable for three reasons.
14 First, the issuance of a permanent easement enabling a massive casino is not analogous to the illustrative
15 examples of minor alterations to land in Guidelines section 15304, so the exemption is facially
16 inapplicable. Second, the significant effect exception to the categorical exemption applies, because
17 casino construction and operation will have numerous deleterious effects on the Rancho Jamul Ecological
18 Reserve. Third, the exception for projects that may damage scenic resources within a designated scenic
19 highway applies, both because the looming casino will be visible from SR 94 (a designated scenic
20 highway) and because the increased traffic generated by the casino will damage the scenic qualities of SR
21 94. WCB violated CEQA by improperly claiming that a categorical exemption applied.

22 38. By approving the permanent easement, WCB enabled JIV’s gaming Project without first
23 examining under CEQA the impacts it will have upon traffic and the environment. WCB’s approval of
24 the easement thus impermissibly sidesteps CEQA review. By approving the permanent easement without
25 first conducting environmental review under CEQA, WCB abused its discretion.

26 39. On July 16, 2014, petitioner faxed or emailed and mailed notice to respondents, in
27 accordance with Public Resources Code section 21167.5, informing them of petitioner’s intention to file
28 this action immediately. Concurrently with the filing of this Verified Petition, petitioner has provided

1 notice of the pendency of this proceeding to the California Attorney General as required by Public
2 Resources Code section 21167.7 and Code of Civil Procedure section 388.

3 **SECOND CAUSE OF ACTION**

4 **(Violation of Fish and Game Code)**

5 **(Alleged by Petitioner Against All Respondents and All Real Parties in Interest)**

6 40. The paragraphs set forth above are realleged and incorporated herein by reference.

7 41. Petitioner brings this Second Cause of Action pursuant to Code of Civil Procedure
8 sections 1085 et seq. on the grounds that respondents failed to act in accordance with the law and
9 committed a prejudicial abuse of discretion, in that WCB considered and approved the permanent
10 easement without compliance with Fish and Game Code sections 1580 et seq. and 703.5.

11 42. Fish and Game Code section 1580 authorizes the establishment of ecological reserves, like
12 the Rancho Jamul Ecological Reserve, to "protect threatened or endangered native plants, wildlife or
13 aquatic organisms or specialized habitat . . . for the future use of mankind." It is the Commission's
14 duty to adopt regulations that ensure the "protection, enhancement, maintenance, and administration"
15 of these reserves so that they are "preserved in a natural condition, or [are] provided some level of
16 protection . . . for the benefit of the general public to observe native flora and fauna and for scientific
17 study or research." Fish & Game Code §§ 1580 (first quote), 1584 (second quote). WCB and DFW
18 must abide by the requirements of the Fish and Game Code and those regulations.

19 43. The relevant regulations direct that "[n]o person shall mine or disturb geological
20 formations or archeological artifacts or *take or disturb* any bird or nest, or eggs thereof, or any plant,
21 mammal, fish, mollusk, crustacean, amphibian, reptile or *any other form of plant or animal life in an*
22 *ecological reserve*." 14 C.C.R. § 630(a)(1). In furtherance of this prohibition on disturbing ecological
23 reserves, DFW is granted the broad authorization to "implement enhancement and protective measures to
24 assure proper utilization and maintenance of ecological reserves" if at all necessary. *Id.* These broad
25 protections help ensure achievement of the Legislature's goal of protecting plants and wildlife on these
26 important state lands. *Id.*; Fish & Game Code § 1580.

27 44. Respondents failed to comply with Fish and Game Code sections 1580 and 1584 when
28 WCB approved the permanent easement in the Rancho Jamul Ecological Reserve and DFW therefore

1 failed to "protect[, enhance[and] maintain]" the "natural condition" of the land, as it is required to do.
2 Fish & Game Code §§ 700, 702, 703, 1580; 14 C.C.R. § 630(a)(1). Indeed, as described above, the
3 Project will jeopardize the safety and survival of numerous plant and wildlife species, as well as the
4 pristine nature of the land. The noise and lighting impacts will pose significant threats of injury,
5 displacement and death to the species in the Rancho Jamul Ecological Reserve, and the dramatic increase
6 in traffic on SR 94 that construction and operation of the casino will cause will foreseeably kill, injure
7 and displace wildlife that inhabit the Reserve. Allowing these adverse impacts to the Reserve's wildlife
8 conflicts with respondents' duty to "protect[, enhance [and] maintain]" the "natural condition" of the
9 Reserve. Fish & Game Code §§ 700, 702, 703, 1580; 14 C.C.R. 630(a)(1).

10 45. Although the Fish and Game Code does allow construction of facilities and programs
11 within the Reserve, it does so *only* to "provide natural history education and recreation if those facilities
12 and programs *are compatible with the protection of the biological resources of the reserve.*" Fish &
13 Game Code § 1585. That is not the case here. Instead, JIV proposes to build a huge gaming facility that
14 will degrade and conflict with the "natural condition" of the Rancho Jamul Ecological Reserve and the
15 public's opportunity to enjoy and "observe the native flora and fauna." Fish & Game Code § 1584. The
16 permanent easement is not intended to "educate," and is not "compatible with the protection of the
17 biological resources of the reserve." Fish & Game Code § 1585,

18 46. In approving the Project, respondents also failed to comply with Fish and Game Code
19 section 703.5, which declares that it is state policy for DFW to "participate in interagency coordination
20 processes that facilitate consistency and efficiency in review of projects requiring multiple permits . . .
21 [to] enable early consultation with project applicants, and provide improved sharing of data, information,
22 tools, and science to achieve better alignment of planning, policies, and regulations across agencies."
23 Fish & Game Code § 703.5(b). Contrary to this state policy, respondents failed to conduct the
24 environmental review required by CEQA and to coordinate with the relevant agencies, including Caltrans
25 and FWS, to ensure protection of the Rancho Jamul Ecological Reserve as required by the Fish and Game
26 Code.

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1 **THIRD CAUSE OF ACTION**

2 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**
3 **Project Approval as Contrary to C.C.P. §§ 1085 and 1094.5)**

4 **(Alleged by Petitioner Against All Respondents and All Real Parties in Interest)**

5 47. The paragraphs set forth above are realleged and incorporated herein by reference.

6 48. Respondents proceeded in excess of their jurisdiction and abused their discretion in
7 purporting to approve the Project because their approval violates Code of Civil Procedure sections 1085
8 and/or 1094.5 in the following respects, among others:

- 9 a. Such approvals were not made in accordance with the procedures required by law;
10 b. Such approvals were not based on the findings required by law; and
11 c. Such approvals were not based on, and were contrary to, the evidence in the record
12 before respondents.

13 49. Respondents failed to proceed in the manner required by law in the following respects,
14 among others:

- 15 a. Respondents violated CEQA and its implementing regulations as alleged
16 hereinabove; and
17 b. Respondents violated the Fish and Game Code and its implementing regulations as
18 alleged hereinabove.

19 50. Respondents' actions in approving the Project without complying with the procedures
20 required by Code of Civil Procedure sections 1085 and/or 1094.5 exceeded respondents' jurisdiction and
21 constitute a prejudicial abuse of discretion, and therefore are invalid and must be set aside.

22 **PETITIONER IS ENTITLED TO RELIEF**

23 51. The paragraphs set forth above are realleged and incorporated herein by reference.

24 52. Petitioner is beneficially interested in WCB's approval of the permanent easement,
25 because the permanent easement will substantially impair petitioner's members' use and enjoyment of the
26 Rancho Jamul Ecological Reserve – and the surrounding rural Jamul community – by enabling the
27 construction of a massive casino complex with the substantial unmitigated impacts discussed above.

28 53. Petitioner seeks appropriate mandamus, declaratory and injunctive relief to protect the

1 environment and enforce respondents' compliance with CEQA, the Fish and Game Code, and other
2 applicable law.

3 54. An actual controversy exists between petitioner and respondents. Petitioner contends that
4 WCB and DFW acted in violation of applicable law as alleged above, and must therefore vacate and set
5 aside the approval of the permanent easement. Petitioner is informed and believes, and thereon alleges,
6 that WCB and DFW dispute these contentions. A judicial resolution of this controversy is therefore
7 necessary and appropriate.

8 55. At all times mentioned herein, WCB and DFW were able to conduct environmental
9 review and analysis of the permanent easement as required by CEQA and its implementing regulations.
10 Nonetheless, WCB and DFW have failed and continue to fail to perform their duty to conduct this
11 required environmental review and analysis.

12 56. At all times mentioned herein, WCB and DFW were able to perform their duties in
13 compliance with the Fish and Game Code and its implementing regulations. Nonetheless, WCB and
14 DFW have failed and continue to fail to protect, enhance and maintain the Rancho Jamul Ecological
15 Reserve and its wildlife as required.

16 57. If WCB is not ordered to set aside its approval of the permanent easement, petitioner and
17 the public will be irreparably harmed. Petitioner has no plain, speedy, and adequate remedy in the
18 ordinary course of law in that, unless this Court issues its writ of mandate or injunctive relief vacating
19 WCB's approval of the permanent easement and requiring WCB and DFW to comply with CEQA and
20 the Fish and Game Code, WCB's approval challenged herein would violate applicable law. No monetary
21 damages or other legal remedy could adequately compensate petitioner for the harm to essential
22 environmental reviews, preservation of ecologically sensitive areas, and environmental quality threatened
23 by WCB's approval of the Project.

24 **RELIEF REQUESTED**

25 WHEREFORE, petitioner/plaintiff prays for judgment and further relief as follows:

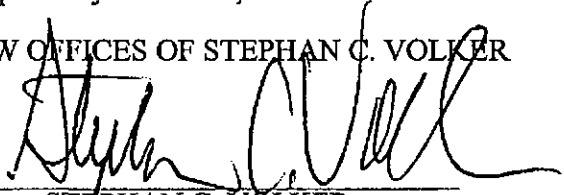
- 26 1. For a peremptory writ of mandate directing WCB to set aside and vacate its approval of
27 the permanent easement;
28 2. For declaratory relief declaring the permanent easement to be unlawful;

- 1 3. For injunctive relief to prevent WCB and DFW from implementing the permanent
2 easement unless and until WCB and DFW have complied with the law;
3 3. For attorneys' fees under Code of Civil Procedure section 1021.5;
4 4. For costs incurred in this action; and
5 5. For such other equitable or legal relief as the Court may deem just and proper.
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7 Dated: July 16, 2014

Respectfully submitted,

8 LAW OFFICES OF STEPHAN C. VOLKER
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11 By: STEPHAN C. VOLKER
12 Attorney for Petitioner
13 JAMULIANS AGAINST THE CASINO
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