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COMITE CIVICO DEL VALLE and EARTHWORKS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

COMITE CIVICO DEL VALLE; EARTHWORKS, Petitioners, v. COUNTY OF IMPERIAL; DOES 1 through 4, Respondents, CONTROLLED THERMAL RESOURCES (US), INC.; HELL'S KITCHEN POWERCO 1, LLC; HELL'S KITCHEN LITHIUMCO 1, LLC; DOES 5 through 10, Real Parties in Interest.	Case No. **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** Filed under the California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21168 & 21168.5 and Cal. Code of Civ. Proc. §§ 1094.5 & 1085)

Petitioners COMITÉ CIVICO DEL VALLE ("Comité") and EARTHWORKS (collectively "Petitioners") file this Verified Petition for Writ of Mandate ("Petition") against Respondent COUNTY OF IMPERIAL ("Respondent" or "County") and Real Parties in Interest CONTROLLED THERMAL RESOURCES (US), INC. and its subsidiaries HELL'S KITCHEN POWERCO 1, LLC and HELL'S KITCHEN LITHIUMCO 1, LLC (collectively "Real Party" or "CTR"), and allege the following:

INTRODUCTION

1. By this action, Petitioners challenge the County's approval of CTR's proposed geothermal power plant and related mineral extraction and processing facilities utilizing direct lithium extraction ("DLE") from geothermal brine ("Project") located near the southeastern shore of the Salton Sea at 7903 Davis Road in Niland, California 92257 ("Site").

2. In furtherance of the Project, the County approved and/or adopted on January 23, 2024: Conditional Use Permits Nos. 21-0020 and 21-002 ("CUP(s)") to allow the use of geothermal energy and mineral extraction; Variances Nos. 21-0004 and 21-0005 ("Variance(s)") to increase the heights of some structures from the allowed 35 feet to up to 110 feet tall; a Water Supply Assessment ("WSA") to assess the Project's 30-year water demand from water supplier the Imperial Irrigation District ("IID"); a Project-specific Environmental Impact Report (SCH # 2022030704) ("EIR"); the EIR's Mitigation Monitoring and Reporting Program ("MMRP"); and related resolutions and findings of fact (collectively "Project Approvals").

3. As set forth in the First Cause of Action herein, Petitioners allege that the Project Approvals violated the California Environmental Quality Act, Pub. Res. Code § 21000 et seq., ("CEQA") and 14 Cal. Code Regs. § 15000 et seq. ("CEQA Guidelines") by relying on a fatally flawed EIR. As set forth in the Second Cause of Action herein, Petitioners allege that the findings of fact for the Project Approvals lack substantial evidence, as required under Imperial County Code ("ICC"), CEQA, and other state laws.

4. As a general matter, Petitioners are not opposed to lithium development near the Salton Sea, nor against DLE as compared to conventional methods of lithium production (e.g., brine evaporation or open-pit mining). However, Petitioners are against the take-it-or-leave-it approach used for this CTR Project that relies on an EIR that omits critical information, depends on unsubstantiated assumptions, and dismisses numerous detailed comments submitted by experts, academics, engineers, and public agencies indicating the EIR failed to consider the full range of impacts caused by the construction and operation of the Project—particularly as it relates to Project-specific and cumulative impacts on water usage, air quality, and hazards. These impacts will affect the surrounding disadvantaged, environmental justice and tribal communities

in Imperial County that are acutely impacted by less water making its way to the rapidly shrinking Salton Sea, which results in harmful dust contaminated by pesticides and fertilizers from the exposed playa.

5. For example, the EIR downplays the Project's water usage of 6,500 acre-feet per year ("AFY") by ignoring three related geothermal projects proposed by BHE Renewables requesting 13,165 AFY, which cumulatively exceeds IID's 18,620 AFY of water available for new developments involving non-agricultural industrial uses, as of November 2022, stated in the Interim Water Supply for Non-Agricultural Projects ("IWSP"). This is a clear math problem showing a significant impact on water supply under current conditions, notwithstanding the foreseeability that IID will suffer significant cuts from its apportionment of Colorado River water. This is further exacerbated by foreseeable future projects, such as CTR's planned seven-stage lithium campus (of which the Project is merely the first stage) and the County's specific plan aimed at furthering the lithium production industry, calling for 10,000 acres of near-term development, needing 100,000 AFY of water. Yet, this is entirely omitted from the EIR, which includes no analysis of the impacts caused to the Salton Sea or consideration of mitigation measures for the increased exposed playa.

6. Additionally, the EIR makes numerous assumptions about the Project operations, such as asserting that all mineral shipments would be by electric vehicles (without any discussion of how such fleets would be feasible in the short/medium term) and that the DLE operation would not generate any waste because the non-lithium byproducts would be sold (absent any proof of study). These assumptions, as well as the claimed economic development benefits, are speculative and entirely unenforceable due to the weak mitigation measures and conditions of approval ("COA(s)") imposed on the Project Approvals. Nor did the EIR acknowledge the novelty of DLE operations, especially at the commercial scales proposed by CTR, which warrants further mitigation and alternatives to ensure evolving best practices will be implemented openly and transparently, consistent with applicable environmental justice policies. Unfortunately, CTR and the County refused to consider any project alternatives beyond the no-project alternative.

7. Also troubling is the lack of "meaningful" tribal consultation as required under CEQA pursuant to the Legislator enacted Assembly Bill ("AB") 52 (2014), as evidenced by the concerns raised by multiple tribal representatives from the Kwaaymii Laguna Band of Indians ("Kwaaymii"), Quechan Tribe of the Fort Yuma Reservation ("Quechan"), and other tribes. For example, substantial evidence shows that Kwaaymii representatives were not timely consulted and concerns were not addressed in the EIR, such as the identification of the tribal cultural resource cultural landscape for the Southeast Lake Cahuilla Active Volcanic Cultural District ("SLCAVCD") or considering direct, indirect, and cumulative impacts to nearby significant cultural resources (e.g., Mullet Island, the new mud pots), which are sacred sites to tribes for medicine and training. Nor did the MMRP incorporate tribal-specific mitigation measures, such as employing tribal monitors during the Project's construction phase. Unfortunately, *the County treated its AB 52 requirements as little more than checking the box*.

8. Ultimately, by masking the foreseeable environmental impacts caused by the Project, the EIR improperly evades the consideration of mitigation measures and project alternatives. Here, *the County granted the Project Approvals while leaving off the table meaningful changes to the Project, including but not limited to onsite measures that reduce the Project's water usage, air quality mitigation from the increasingly exposed playa, protection of tribal cultural resources during Project construction, and robust monitoring that would ensure emerging best practices be transparently implemented in the future* (to name a few). So too, the EIR's inadequate analysis skewed the County's overriding consideration, which lacks concrete public benefits for the Project's long-term operations, which could feasibly be achieved through an enforceable community benefit agreement ("CBA") and/or development agreement.

9. In sum, CTR and the County's unwillingness to consider meaningful mitigation measures or project alternatives is highly concerning, given that they come at the expense of the surrounding disadvantaged communities and affiliated tribes. *This runs counter to core environmental justice policies and sets a bad precedent as CTR and the County embark on grander projects for the area*.

JURISDICTION

10. This Court has jurisdiction under Pub. Res. Code §§ 21168 or 21168.5 (CEQA action) and Code Civ. Proc §§ 1085 or 1094.5 (mandamus action). The Project Site is located in Imperial County. The within action has been timely brought within 90 days of the Project Approval per Gov. Code § 65009. Pursuant to a tolling agreement between the relevant parties,[1] this action is also timely brought within the statute of limitations of the CEQA Notice of Determination ("NOD") filed on January 24, 2024, for the Project per Pub. Res. Code § 21167. Prior to filing this Petition, Petitioners served a Notice of Intent to file this action on the County pursuant to Pub. Res. Code § 21167.5 by hand delivery and/or mail, as reflected in Exhibit A (attached hereto). Concurrent with the filing of this action, Petitioners notified the Attorney General of the State of California of the filing of this Petition in accordance with Pub. Res. Code § 21167.7.

11. As alleged herein, the violations by the Respondent have affected the beneficial interests of the Petitioners and/or its supporting members, as well as the enforcement of important rights that affect the public interest. Issuance of the relief requested in this Petition will confer a substantial benefit on the public, including citizens, residents, businesses and taxpayers affected by the County's actions here, and will result in the enforcement of important public rights by requiring Respondent and Real Party to comply with CEQA and other legal requirements applicable to the proposed Project.

12. Petitioners have no plain, speedy, or adequate remedy under ordinary law unless this Court grants the requested writ of mandate to require the County to set aside the Project Approvals and prohibit CTR and Respondent from taking further actions concerning the Project until it has complied with those legal requirements. In the absence of such remedies, the County's decision will remain in effect in violation of state law and injurious to Petitioners and the public. The relief sought by way of this Petition will redress the likelihood of future injury and

[1] Courts recognize the *validity* and *highly favored public policy* behind tolling agreements. (See e.g., *Salmon Protection & Watershed Network v. County of Marin* (2012) 205 Cal.App.4th 195, 203; *Don Johnson Productions, Inc. v. Rysher Entertainment, LLC* (2012) 209 Cal.App.4th 919, 928.)

interference with Petitioners' beneficial interests, its supporting members, and the public's interest in having the law duly followed.

PARTIES

13. Petitioner COMITE CIVICO DEL VALLE is a non-profit environmental health and justice organization corporation located at 235 Main Street, Brawley, California 92227, whose members include affected individuals who have a beneficial interest in the matter set forth in this Petition. With origins in 1987, Comité's mission is to ensure environmentally responsible development and informed decisionmaking by public officials with particular attention to environmental justice issues affecting stakeholders in Imperial County. Petitioner's interest, and the public's interest, will be directly affected by the Project and Respondent's failure to comply with the requirements of CEQA in connection with the Project, including but not limited to water usage, air quality, hazards, odor, greenhouse gas ("GHG"), and other environmental impacts resulting from the Project and flawed EIR, as well as adverse effects to the public health and welfare. In addition to having standing via its members, the Petitioner has public interest standing given that the Project involves the County's duty to enforce applicable laws. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n6.)

14. Petitioner EARTHWORKS is a non-profit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. Earthworks is headquartered in Washington, D.C., and has offices around the country, including in Berkeley, California. Petitioner has employed its extensive research and advocacy experience to protect Imperial County from the adverse impacts of mining, including educating the public about the environmental impacts of proposed direct lithium extraction. Petitioner also has standing via its members and public interest standing. (Id.)

15. Petitioners objected to the Project Approvals before the close of the public hearing on the Project, including but not limited to submitting legal and technical comment letters. All administrative remedies have been exhausted in that the County's determinations are final, and no further administrative appeal procedures are provided by State or local law. All issues submitted for judicial review in this Petition were sufficiently raised and disputed with Respondent before

the final approval of the Project. Respondent was given notice and the opportunity to act in compliance with CEQA and other applicable laws but failed to do so. It is well-established that any party who participates in the administrative process can assert all factual and legal issues raised by any commenting party, official, or agency. (See *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875.) Hence, this Petition incorporates in its entirety all factual and legal claims presented to the County during the Project Approval process, whether by Petitioners, their agents, members, or any commenting party participating in the Project's approval process.

16. Respondent County is a political and geographical subdivision of the State of California with its principal offices located in the El Centro, California, with the legal ability to be sued. (See Gov. Code § 23001 *et. seq*.). The County, via its subagents including its Board of Supervisors and Planning & Development Services Department, acted as the lead agency for the environmental review of the Project and adopted the Project's EIR in that capacity, as indicated in the Project's CEQA NOD. The County has a mandatory duty to comply with applicable local planning documents, local ordinances, and state law requirements, including CEQA, when considering discretionary activities and land use regulatory actions, such as the Project.

17. Real Party CONTROLLED THERMAL RESOURCES (US), INC. is listed as the Project Applicant on the CEQA NOD and believed to be a Delaware corporation doing business under the laws of the State of California with its principal place of business in Imperial, CA.

18. Real Party HELL'S KITCHEN POWERCO 1, LLC and HELL'S KITCHEN LITHIUMCO 1, LLC are believed to be California limited liability companies doing business under the laws of the State of California, both being subsidiaries of CONTROLLED THERMAL RESOURCES (US), INC. with the same principal place of business in Imperial, CA.

19. The true names, capacities, corporate, associate or otherwise of Respondents and Real Parties named herein as DOES 1 through 10, inclusive, are unknown to Petitioners who, therefore, sue said Respondents and Real Parties by fictitious names. Petitioners will amend this Petition to show the true names and capacities when they have been ascertained.

GENERAL ALLEGATIONS

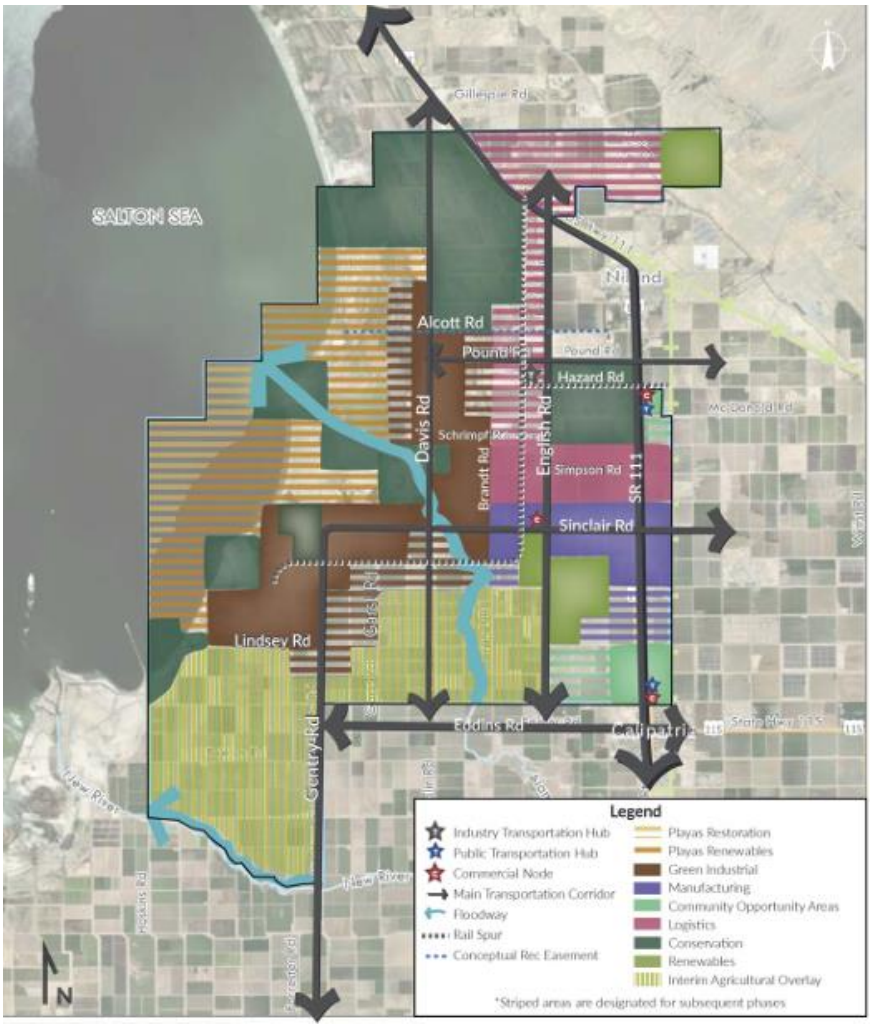
20. **THE PROJECT & SITE**: The Project includes the development of (a) Hell's Kitchen PowerCo 1 involving a 49.9 megawatts geothermal power plant ("HKP1") and (b) Hell's Kitchen LithiumCo 1 involving mineral extraction and processing facilities capable of producing lithium hydroxide, silica and polymetallic products, and possibly boron compounds, for commercial sale ("HKL1"). In addition to various other structures, the Project also includes the paving of an approximate two-mile dirt road, the construction of a 2+ mile 230-KV gen-tie line, and the construction and operation of various minerals handling and packaging facilities, administrative facilities, offices, repair facilities, shipping and receiving facilities, and other infrastructure components. The development site is roughly 68 acres near the southeastern shore of the Salton Sea, approximately 3.6 miles west of the town of Niland. (See figure below.)

21. **PROJECT APPROVAL PROCESS**: In March 2022, the County released a Notice of Preparation ("NOP") of the Draft EIR. Multiple commenters requested an in-depth analysis of potential impacts of the Project, including IID, requesting an analysis of possible environmental and water supply impacts caused on the Salton Sea as a result of reduced drainage flow and warned against improper project piecemealing. Comité was among the NOP commenters.

22. In late August 2023, the County released the Draft EIR for the Project, which had missing sections (as well as other irregularities) that were subsequently released in October 2023. Comité and Earthworks submitted extensive comments, including multiple expert letters, raising various concerns with the Draft EIR—particularly as it related to its use of outdated water data and the failure to consider as related projects three new geothermal plants proposed by BHE Renewables anticipated to require 13,165 AFY of water (not including plans for DLE operations). These concerns were echoed by IID. So too, the California State Lands Commission raised concerns over the Draft EIR's failure to disclose the Project's proposed directional drilling, and the California Department of Fish and Wildlife pointed out that CTR had already dewatered without permits. Furthermore, comments submitted on behalf of the Kwaaymii raised concerns about the lack of meaningful AB 52 consultation, including the failure to consider tribal expert evidence, require specific tribal mitigation, or analyze alternatives to avoid impacts on significant tribal cultural resources.

23. In December 2023, the County released the Project's Final EIR, including minimal revisions and cursory Response to Comments ("RTC") and inadequate mitigation measures, such as the ambiguous call for CTR to work with IID to ensure water availability in the event of IID water cuts from the Colorado River and generic archaeological monitoring. Despite further objections from Petitioners and the Kwaaymii, the Planning Commission granted the Project Approvals, which Comité timely appealed to the County Board of Supervisors ("BOS") on December 22, 2023. In the wake of the Commission's approval, CTR announced its intentions that the Project is merely the first stage of its planned seven-stage campus encompassing a roughly 190-acre development (see figure on the following page), which was not mentioned in the EIR.

24. Also not disclosed in the Final EIR was the December 2023 initial study for the County's own Lithium Valley Specific Plan ("Specific Plan"), which aimed to further the development of the lithium extraction/battery manufacturing industry over a 51,786-acre planning area (see figure right). Accordingly, the initial study for the Specific Plan anticipated that just the first phase of the near-term development of 10,000 acres would require 100,000 AF of water.



25. Leading up to the BOS hearing on January 23, 2024, Comité submitted multiple comment letters—including comments from several academic experts—objecting to the Final EIR and CTR's response to the appeal. Petitioners urged, unsuccessfully, that the County provide a brief continuance so the parties could resolve the EIR's CEQA issues via meaningful changes to the Project. On the eve of the BOS hearing, the County released revised CEQA findings and MMRP with slightly modified mitigation referencing the potential for additional measures to reduce the Project's water usage (including the first mention of potential groundwater use). On the day of the hearing, Petitioners and others, including the representatives from the Kwaaymii, Quechan, and other tribes, objected to the Project and again requested a brief continuance to explore productive solutions that would address impacts without hindering the Project. Nevertheless, the BOS denied Comité's appeal and granted the Project Approvals. On January 24, 2024, Respondent filed a CEQA NOD for the Project.

FIRST CAUSE OF ACTION

(WRIT OF MANDATE – CEQA VIOLATIONS)

26. Petitioners restate and reallege Paragraphs 1-25, as if fully set forth herein.

27. CEQA requires lead agencies to analyze the potential environmental impacts of its actions in an environmental impact report ("EIR"). (See e.g., Pub. Res. Code § 21100; *Cmtys. for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Cmtys. for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109; see also *Lincoln Place Tenants Ass'n. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 443-44 (citing CEQA Guidelines § 15002, "[t]he fundamental goals of environmental review under CEQA are information, participation, mitigation, and accountability.").)

28. **CEQA'S PURPOSE**: CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (See CEQA Guidelines § 15002(a)(1).) To this end, public agencies must ensure that its

analysis "stay in step with evolving scientific knowledge and state regulatory schemes." (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* ("*Cleveland II*") (2017) 3 Cal.5th 497, 504.) Hence, an analysis that "understates the severity of a project's impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." ("*Cleveland III*", on remand 17 Cal.App.5th 413, 444; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* ("*Laurel Heights")* (1988) 47 Cal.3d 376, 392).)

29. Second, CEQA requires public agencies to avoid or reduce environmental damage by requiring the implementation of environmentally superior alternatives and all feasible mitigation measures. (See CEQA Guidelines § 15002(a)(2) & (3); see also *Citizens of Goleta Valley*, 52 Cal.3d at 564.) If a project has a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any significant unavoidable effects on the environment are "acceptable due to overriding concerns." (CEQA Guidelines § 15092(b)(2)(A) & (B); see also Pub. Res. Code § 21081.)

30. **STANDARD OF REVIEW FOR EIRS**: For EIRs, courts apply an abuse of discretion standard whereby a lead agency abuses its discretion if it "'has not proceeded in the manner required by law or if the determinations or decision is not supported by substantial evidence.'" (*Laurel Heights*, 47 Cal.3d at 392-393 (quoting Pub. Res. Code § 61168.5); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Although courts review an EIR using an 'abuse of discretion' standard, that standard does not permit a court to "'uncritically rely on every study or analysis presented by a project proponent in support of its position … [,] [a] clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1355 (quoting *Laurel Heights*, 47 Cal.3d at 409 n. 12).) A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed

decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; see also *Galante Vineyards v. Monterey Peninsula Water Management Dist*. (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.) Whether an EIR is sufficient as an informational document, such as an "EIR's disclosures regarding [a] project's water supply complies with CEQA[,]" is a question of law subject to independent review by the courts. (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102 [overruled on other grounds in *Neighbors for Smart Rail v Exposition Metro Line Constr. Auth*. (2013) 57 Cal4th 439].)

31. For a lead agency's factual determinations, courts apply the "substantial evidence" standard. Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached . . . ." (CEQA Guidelines § 15384(a).) Under CEQA, substantial evidence includes facts, a reasonable assumption predicated upon fact, or expert opinion supported by fact; not argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. (See e.g., Pub. Res. Code §§ 21080(e), 21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384.) As such, courts will not blindly trust bare conclusions, bald assertions, and conclusory comments without the "disclosure of the 'analytic route the . . . agency traveled from evidence to action.'" (*Laurel Heights,* 47 Cal.3d at 404 405 (quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles* ("*Topanga")* (1974) 11 Cal.3d 506, 515); see also *Citizens of Goleta Valley,* supra, 52 Cal.3d at 568-569; *Cleveland III,* supra, 17 Cal.App.5th at 441 (agency "obliged to disclose what it reasonably can … [or] substantial evidence showing it could not do so.").)

32. **COUNTY ABUSE OF DISCRETION WHEN CERTIFYING THE FINAL EIR**: Here, the County failed to proceed in the manner required by law in connection with the fatally flawed Project EIR, and substantial evidence from Petitioners, experts, academics, public agencies,

tribes, and other commenting parties raises significant concerns with this document, including but not limited to the issues highlighted below (to name just a few):

a) **HYDROLOGY & UTILITY**: The EIR failed to disclose the Project's magnitude under Water Code §§ 10910-10915, particularly within the context of the foreseeable substantial reductions in California's allocation from the Colorado River and the water needs of projects already in the permitting process (e.g., BHE Renewables three geothermal plans), as well as the foreseeable water needs of CTR's grander seven-stage campus project (i.e., adding six more DLE/power plants and two battery hubs) and the County's own Specific Plan calling for 100,000 AF of water. Additionally, the EIR fails to provide a hydrology study examining the impacts of how the DLE operation may introduce non-native constituents, such as polymeric chemicals, to the brine matrix and ultimately contaminate the geothermal reservoir. Nor did the EIR consider the impacts of the newly revised MMRP measure, indicating for the first time, the potential of utilizing groundwater. The WSA's flawed analysis avoids the determination that supplies may be insufficient and the need to describe plans for acquiring additional water supplies. (See Water Code § 10911(c); CEQA Guidelines §15155(e).) The WSA's narrow analysis ignored relevant information, showing that future water supplies are uncertain, contrary to CEQA. (See e.g., *Madera Oversight Coalition*, supra, 199 Cal.App.4th at p. 104; *Preserve Wild Santee v City of Santee* (2012) 210 CA4th 260, 282.)

b) **AIR QUALITY**: The EIR's air quality analysis failed to adequately analyze the Project's air impacts, such as the impacts from exacerbating Salton Sea degradation, assumed zero hydrochloric acid ("HCl") emissions (based on the conclusory claim that scrubbers would be 100% effective), PM2.5 and PM10, non-condensable gases including hydrogen sulfide, and the inappropriate modeling of construction-related emissions from the unpaved access road.

c) **HAZARDOUS WASTE MATERIALS**: The EIR's hazards and waste analysis failed to adequately analyze the Project's impacts, such as providing proof of concept justifying the assumption that the mineral extraction process would not generate any waste because its

byproducts (beyond lithium) would be sold or address the potential for increased or induced seismic activity, and inappropriate modeling of construction-related emissions from the unpaved access road.

d) **TRIBAL CULTURAL RESOURCES**: Contrary to AB 52, the EIR failed to meaningfully consult with tribes to identify and minimize impacts on tribal cultural resources, such as employing tribal monitors during the Project's construction phase or considering the cumulative impacts on tribal cultural resources within and/or near the SLCAVCD. (See e.g., AB § (b); Pub. Res. Code §§ 21080.3.1 & 21080.3.2.) Instead, tribal expert testimony was ignored.

e) **GHG EMISSIONS**: The EIR's air quality and GHG analysis failed to adequately analyze the Project's impacts, such as assuming electric trucks for all product shipping without any explanation showing such promises are feasible in the short/medium term and assuming massive GHG credits.

f) **PROJECT DESCRIPTION**: The EIR failed to provide an accurate and stable project description, including but not limited to providing relevant information about Project operations (e.g., details about brine pond, clarifiers, filter cake presses, brine composition, substantial use of acids, etc.) Nor did the EIR recognize the novelty of DLE operations at yet-proven commercial scales, nor did it address the emergence of evolving best practices and control technologies for this developing industry.

g) **PROJECT PIECEMEALING & CUMULATIVE IMPACTS**: Here, CTR improperly piecemealed the Project by failing to consider directional drilling, construction of other water infrastructure improvements, and CTR's planned seven-stage lithium campus, which were foreseeable and reasonable to CTR when it announced its plans on the heels of the Planning Commission approval hearing. Nor did the EIR adequately assess the cumulative impacts of the Project in the context of the three related geothermal projects (i.e., BHE Renewables) and the County's Specific Plan calling for the use of an additional 100,000 AF of water.

h) **LAND USE INCONSISTENCIES**: The EIR's land use consistency analysis failed to adequately identify inconsistencies with applicable zoning policies, such as goals and programs under the County's General Plan Conservation and Open Space Element and Water Element.

i) **RELIANCE ON ILLUSORY MITIGATION MEASURES**: As multiple experts raised, the EIR relied upon vague, unenforceable mitigation measures untethered to good-faith analysis or specific performance criteria—particularly, but not limited to, impacts on water usage, air quality, hazards, GHG, tribal resources, and others.

j) **ALTERNATIVE ANALYSIS**: The County's EIR failed to provide an adequate alternative analysis, such as a project alternative that utilizes a Development Agreement to codify greater mitigation measures/COAs, addresses the novel and evolving DLE operations through future annual reviews, and establishes a framework to craft enforceable operational public benefits through a CBA.

k) **RESPONSE TO COMMENTS**: The Final EIR, including RTC, failed to provide a good-faith response to Draft EIR comments, including a cursory response to expert comments submitted by Petitioners and tribes and the wholesale omission of comments from other organizations.

l) **STATEMENT OF OVERRIDING CONSIDERATIONS**: Here, the EIR's statement of overriding considerations is infected by an inadequate environmental analysis that underestimates the impacts of the Project.

33. In summary, the County abused its discretion when it approved the fatally flawed Project EIR, where it (a) failed to include necessary relevant information that precluded informed decisionmaking and informed public participation and (b) relied on bare conclusions, bald assertions and conclusory comments untethered to evidence in the record reasoned analysis. (See *San Joaquin Raptor*, supra, 27 Cal.App.4th at 722; see also *Laurel Heights*, supra, 47 Cal.3d at 404-405 (quoting *Topanga*, supra, 11 Cal.3d at 515).)

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34. Petitioners have no plain, speedy, or adequate remedy at law other than the relief sought in this Petition. If the County persists in its refusal to rescind the Project Approvals and allow the development of the Project, Petitioner and the public will suffer irreparable harm from which there is no adequate remedy at law in that the Project will be built, operations commence, and significant adverse impacts on the environment would occur, contrary to State and local law.

SECOND CAUSE OF ACTION

(WRIT OF MANDATE – INCONSISTENCY WITH APPLICABLE ZONING LAWS)

35. Petitioners restate and reallege Paragraphs 1-34, as if fully set forth herein.

36. The California Supreme Court has described General Plans and zoning schemes in many ways. (See e.g., *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 [as a 'constitution,' "for future development located at the top of 'the hierarchy of local government law regulating land use]; *Topanga,* supra, 11 Cal.3d at pp. 517-518 [as a 'contracts,' where "each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare"]; *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 159 [as a 'yardstick,' where "one should be able to 'take an individual parcel and check it against the plan and then know which uses would be permissible"].) While planning agencies enjoy some discretion interpreting their zoning laws, "deference has limits" and courts are not bound by unreasonable interpretations contrary to the plain language of regulations and statutes. (Id. at 146, 156-157 [rejecting attempts to "downplay the facial inconsistency," the Court held the city abused its discretion finding residential project consistent with general plan designation where "no reasonable person could conclude that the Property could be developed without a general plan amendment"]; see also *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 928-930 [vacating variance based on the zoning administrator's interpretation contradicted by the plain language of the municipal code].)

37. Here, Petitioner is informed and believes that granting the Project Approvals constituted a prejudicial abuse of discretion by Respondent failing to proceed in the manner required by law and/or making the required land use findings supported by substantial evidence,

including but not limited to the findings regarding the: (a) adequacy of the Project EIR and MMRP; (b) WSA findings; and (c) Code-required findings for the CUPs and Variances involving general plan consistency, compliance with applicable state/local laws (like CEQA), and other public safety findings (see e.g., ICC § 90203.09 subds. A, D, E, F [CUP findings]; 90202.08.A(2) [Variance finding].) Here, these findings are not supported by substantial evidence and, therefore, should not have been granted. (See e.g., *Topanga*, supra, 11 Cal.3d at p. 517; *West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1522 (city abused its discretion when acting on "evidence not in the record ... [where] conclusory findings did not show how the city council traveled from evidence to action.").)

38. Petitioners have no plain, speedy, or adequate remedy at law other than the relief sought in this Petition. If the County persists in its refusal to rescind the Project Approval, and if Respondent and CTR are not enjoined or stayed from undertaking acts in furtherance of the Project, Petitioners, and the public will suffer irreparable harm from which there is no adequate remedy at law in that the Project can be occupied, operations commence and significant adverse impacts on the environment would occur, contrary to the requirements of the law.

39. For the foregoing reasons, the County has failed to proceed in accordance with applicable land use plans and zoning laws and, therefore, Petitioners are entitled to the issuance of a writ of mandate setting aside all Project Approvals.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for the following relief:

1. That the Court enters a peremptory writ of mandate ordering the County to set aside and void the Project Approvals pending its full compliance with the ICMC, CEQA, and other governing laws – including but not limited to preparing a CEQA-compliant, re-circulated EIR tethered to substantial evidence with enforceable mitigation measures and making the necessary zoning/CEQA findings supported with substantial evidence;

2. That the Court issue a temporary stay, stay, temporary restraining order, and/or an injunction ordering the County, Real Party, their agents and successors to refrain from proceeding with the Project and issuing further permits while this Petition is pending.

3. That the Court issue a permanent injunction ordering the Respondent and CTR to refrain from proceeding with the Project pending the Respondent's full compliance with CEQA, the ICC, and other governing laws;

4. For Petitioners' costs and fees pursuant to Code of Civil Procedure; and

5. For other and further relief as the Court finds proper.

DATE: March 13, 2024

LAW OFFICE OF JORDAN R. SISSON

By: _____
JORDAN R. SISSON
Attorney for PETITIONERS

VERIFICATION

I, the undersigned, have read the VERIFIED PETITION FOR WRIT OF MANDATE and know its contents. The matters stated therein are true to my own knowledge and belief, except as stated on information and belief, and to those matters I believe them to be true.

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

Executed on March 13, 2024, at Brawley, California.

Luis Olmedo on behalf of Comité Civico del Valle

Executed on March 13, 2024, at San Francisco, California.

Jared Naimark on behalf of Earthworks

EXHIBIT A

LAW OFFICE OF JORDAN R. SISSON

LAND USE, ENVIRONMENTAL & MUNICIPAL LAW

3993 Orange Street, Suite 201
Riverside, CA 92501

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jordan@jrsissonlaw.com
www.jrsissonlaw.com

January 23, 2024

VIA HAND-DELIVERY:

Board of Supervisors, County of Imperial
c/o Clerk of the Board

RE: REQUEST FOR CEQA NOD; PRESERVATION OF PROJECT RECORDS; NOTICE OF INTENT TO FILE CEQA ACTION; TOLLING AGREEMENT; HELL'S KITCHEN POWERCO I AND LITHIUM CO I PROJECT

Dear Honorable Board Supervisors:

This office represents Comité Civico del Valle ("**Comité**" or "**Appellant**") who submitted comments and appealed the geothermal power plant and mineral extraction/processing facilities ("**Project**") proposed by Controlled Thermal Resources (US) Inc., ("**CTR**" or "**Applicant**"). On January 23, 2024, the County of Imperial ("**County**") Board of Supervisors ("**BOS**") denied Comité's appeal and finally approved the requested Conditional Use Permits (i.e., Nos. 21-0020 & 21-002), two Variances (i.e., Nos. 21-0004 & 21-0005), Environmental Impact Report (SCH # 2022030704) ("**EIR**"), and related resolutions and findings of fact (collectively "**Project Approvals**").

First, pursuant to Pub. Res. Code §§ 210922, 21167(f) and Gov. Code § 65092, *Comité respectfully requests any notice of determination* ("**NOD**") filed for the Project for purposes of the California Environmental Quality Act ("**CEQA**"). Please note that because Comité timely appealed the Project Approvals, the previously filed NOD of December 15, 2023 was premature.[1] (See *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418, 425.)

Second, please take notice that pursuant to Pub. Res. Code § 21167, *Comité intends to timely file a Petition for Writ of Mandate* ("**Petition**") challenging the County's January 23, 2024 approval of the CTR's Project, including but not limited to the granting of all Project Approvals. The Petition will allege, among other things, that the County did not comply with CEQA, the Imperial County Code, and other applicable environmental/zoning laws when the BOS approved the Project.

Third, please take notice that *Comité would consider a tolling agreement* between the relevant parties to avoid the imminent filing of this lawsuit. If you wish to discuss this option for a tolling agreement, please contact the undersigned immediately with the contact information of the parties' respective counsel to discuss this matter.

Fourth, this letter serves to *remind the County of its duty to preserve all records* concerning the Project's compliance with CEQA, which will likely be reviewed by way of administrative mandamus (see Civ. Code Proc. §§ 1094.5, Pub. Res. Code § 21168), that is generally limited to the record of proceedings before the County ("**Administrative Record**"). (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559.) In addition to mandatory documents listed in Pub. Res. Code § 21167.6(e), the Administrative Record, should include "pretty much everything that ever came near a proposed development or to the agency's compliance with CEQA in responding to that development."

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[1] https://recorder.co.imperial.ca.us/EirInternet/en/Eir/Download/1210?isReceipt=false.

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January 23, 2024

VIA HAND-DELIVERY:

Board of Supervisors, County of Imperial
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RE: REQUEST FOR CEQA NOD; PRESERVATION OF PROJECT RECORDS; NOTICE OF INTENT TO FILE CEQA ACTION; TOLLING AGREEMENT; HELL'S KITCHEN POWERCO I AND LITHIUM CO I PROJECT

Dear Honorable Board Supervisors:

This office represents Comité Civico del Valle ("**Comité**" or "**Appellant**") who submitted comments and appealed the geothermal power plant and mineral extraction/processing facilities ("**Project**") proposed by Controlled Thermal Resources (US) Inc., ("**CTR**" or "**Applicant**"). On January 23, 2024, the County of Imperial ("**County**") Board of Supervisors ("**BOS**") denied Comité's appeal and finally approved the requested Conditional Use Permits (i.e., Nos. 21-0020 & 21-002), two Variances (i.e., Nos. 21-0004 & 21-0005), Environmental Impact Report (SCH # 2022030704) ("**EIR**"), and related resolutions and findings of fact (collectively "**Project Approvals**").

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Second, please take notice that pursuant to Pub. Res. Code § 21167, *Comité intends to timely file a Petition for Writ of Mandate* ("**Petition**") challenging the County's January 23, 2024 approval of the CTR's Project, including but not limited to the granting of all Project Approvals. The Petition will allege, among other things, that the County did not comply with CEQA, the Imperial County Code, and other applicable environmental/zoning laws when the BOS approved the Project.

Third, please take notice that *Comité would consider a tolling agreement* between the relevant parties to avoid the imminent filing of this lawsuit. If you wish to discuss this option for a tolling agreement, please contact the undersigned immediately with the contact information of the parties' respective counsel to discuss this matter.

Fourth, this letter serves to *remind the County of its duty to preserve all records* concerning the Project's compliance with CEQA, which will likely be reviewed by way of administrative mandamus (see Civ. Code Proc. §§ 1094.5, Pub. Res. Code § 21168), that is generally limited to the record of proceedings before the County ("**Administrative Record**"). (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559.) In addition to mandatory documents listed in Pub. Res. Code § 21167.6(e), the Administrative Record, should include "pretty much everything that ever came near a proposed development or to the agency's compliance with CEQA in responding to that development."

[1] https://recorder.co.imperial.ca.us/EirInternet/en/Eir/Download/1210?isReceipt=false.

(*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 64 [disapproved on other grounds in *Neighbors for Smart Rail v. Expo. Metro Line Cons. Auth.* (2013) 57 Cal.4th 439, 465-457].) This includes, but not limited to, internal staff communications via emails. (See *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 761-769; see also Pub. Res. Code § 21167.6(e)10.) Hence, the County should ensure that all documents—including all relevant Project-related emails—are retained.

Do not hesitate to contact me directly by phone or email if you have any questions about this correspondence.

Sincerely,

Jordan R. Sisson
Attorney for Comité Civico del Valle

LAW OFFICE OF JORDAN R. SISSON

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February 16, 2024

VIA U.S. MAIL:

Board of Supervisors, County of Imperial
c/o Clerk of the Board
940 W. Main Street, Suite 209
El Centro, CA. 92243

RE: NOTICE OF INTENT TO FILE CEQA ACTION; TOLLING AGREEMENT; HELL'S KITCHEN POWERCO I AND LITHIUM CO I PROJECT

Dear Honorable Board Supervisors:

This office represents Earthworks, who submitted comments and participated in the administrative approval of the geothermal power plant and mineral extraction/processing facilities ("Project") proposed by Controlled Thermal Resources (US) Inc., ("CTR" or "Applicant"). On January 23, 2024, the County of Imperial ("County") Board of Supervisors ("BOS") finally approved the requested Conditional Use Permits (i.e., Nos. 21-0020 & 21-002), two Variances (i.e., Nos. 21-0004 & 21-0005), Environmental Impact Report (SCH # 2022030704) ("EIR"), and related resolutions and findings of fact (collectively "Project Approvals"). A notice of determination ("NOD") was filed the next day, triggering deadlines to file a lawsuit under the California Environmental Quality Act ("CEQA").

Please take notice that pursuant to Pub. Res. Code § 21167, *Earthworks intends to timely file a Petition for Writ of Mandate* ("Petition") challenging the County's January 23, 2024 approval of CTR's Project, including but not limited to the granting of all Project Approvals. The Petition will allege, among other things, that the County did not comply with CEQA, the Imperial County Code, and other applicable environmental/zoning laws when the BOS approved the Project.

Earthworks would consider a tolling agreement between the relevant parties to avoid the imminent filing of this lawsuit. Please have your counsel contact the undersigned immediately If you wish to discuss this option for a tolling agreement.

Do not hesitate to contact me directly by phone or email if you have any questions about this correspondence.

Sincerely,

Jordan R. Sisson
Attorney for Comité Civico del Valle & Earthworks

CC: (via email only)

Melissa Hagan (Attorney for Applicant CTR)
Chip Wilkins & Nathan George (Attorneys for the County)

PROOF OF SERVICE

I, Jordan Sisson, declare as follows:

I am a citizen of the United States and work in Riverside County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 3993 Orange St., Ste. 201, Riverside, CA 92501. On Feb.16, 2024, I served the following document(s):

- **PETITIONER EARTHWORKS NOTICE OF INTENT TO FILE A CEQA ACTION**

The document(s) was served on:

Board of Supervisors, County of Imperial
c/o Clerk of the Board
940 W. Main Street, Suite 209
El Centro, CA. 92243

RESPONDENT

Melissa Hagan
LAW OFFICE OF MELISSA B HAGAN, PLLC
P.O. Box 1082
Houston, TX 77251
melissa@melissahaganlaw.com

ATTORNEY FOR REAL PARTY

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ngeorge@rmmenvirolaw.com

ATTORNEYS FOR RESPONDENT

X **VIA U.S. MAIL (to Respondent only)** By placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mailbox at P.O. Box 569, Riverside, CA 92502. I am readily familiar with the office's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

X **VIA ELECTRONIC SERVICE OR EMAIL (Attorneys for Respondent and Real Party only)** by causing a true copy thereof to be electronically delivered to the person(s) or representatives(s) at the email address(es) as stated on the above/attached service list. I did not receive any electronic message or other indication that the transmission was unsuccessful.

___ **PERSONAL SERVICE** by serving the above-referenced recipient at said address.

Executed this Feb. 16, 2024 at Riverside County, CA

By: _____
JORDAN R. SISSON