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5 Attorneys for Plaintiff EL MONTE NATURE PRESERVE,
6 LLC

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 EL MONTE NATURE PRESERVE, LLC,

11 Plaintiff,

12 v.

13 City of San Diego; and DOES 1-20
14 INCLUSIVE,

15 Defendants.

Case No.:

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

Trial Date: None set

16 Plaintiff alleges as follows upon information and belief unless otherwise indicated:

17 1. Plaintiff El Monte Nature Preserve, LLC is a limited liability company with its
18 principal address at 1335 San Lucas Court, Solana Beach, California. El Monte owns property in
19 Lakeside known as parcel numbers 390-040-15, 391-061-01, 392-060-29, 392-150-17 and 393-011-
20 01 also known as 13950 El Monte Road, Lakeside, California. The majority of the property is zoned
21 S82 – extractive use.

22 2. Defendant City of San Diego owns and operates the El Capitan Dam and Reservoir,
23 which was built in 1935. It is rated as poor condition.

24 3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
25 DOES 1 through 20 inclusive and therefore sues these defendants by such fictitious names.

26 4. At all relevant times, each Defendant, including DOES, was the agent, servant,
27 representative, partner or employee of each co-defendant and doing the things herein alleged was
28 acting in the course and scope of their authority as such agents, servants, representatives, partners or

1 employees of each of their co-defendants.

2 5. In 2017, the Oroville Dam spillway was damaged and significant damage occurred.
3 After that incident, where 180,000 people were evacuated, the State began to examine all of the
4 dams in California. Rather than fix the dams to make them safe, the State then placed a limit on how
5 much water each dam could hold.

6 6. Two of the regulated dams are located in San Diego County, Lake Hodges Dam and
7 El Capitan Dam. The El Capitan Dam is located near Plaintiff's property. When the El Capitan Dam
8 reaches its limit, the City, without notice and without making an effort to protect those in the path of
9 the water, intentionally and without exercising discretion, released six billion gallons of water into
10 the community. This has resulted in the water table on Plaintiff's property to be raised by
11 approximately forty feet. This is causing damage to the value of the property because it is zoned for
12 sand mining and the City does not allow sand mining below the water table. Neither the common
13 enemy doctrine nor the police power can justify subjecting previously dry land to the burden of
14 overflow. Beckley v. Reclamation Board of State, 205 Cal.App.2d 734, 753 (1962).

15 7. Plaintiff has nearly finished processing its sand mining permit, which calls for
16 excavation of forty feet of high-quality sand. The City's conduct has rendered those permits
17 worthless because the City has invaded Plaintiff's property and eliminated those forty feet of sand
18 from excavation.

19 8. On May 15, 2024, Plaintiff filed an administrative claim with the City.

20 **FIRST CAUSE OF ACTION**

21 **Inverse Condemnation**

22 9. All preceding paragraphs are incorporated herein by reference.

23 10. Plaintiff owns the property at issue in fee.

24 11. The City is engaged in the public project of operating El Capitan Dam.

25 12. During the City's operation of El Capitan Dam, the City damaged El Monte's
26 property.

27 13. The City's conduct is the proximate cause of El Monte's damages.

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1 **SECOND CAUSE OF ACTION**

2 **Trespass**

3 14. All preceding paragraphs are incorporated herein by reference.

4 15. Plaintiff owns the property at issue in fee.

5 16. The City intentionally, recklessly or negligently caused its water to enter Plaintiff's
6 property.

7 17. Plaintiff did not consent to receive the City's water.

8 18. Plaintiff was harmed.

9 19. The City's conduct was a substantial factor in causing Plaintiff's harm.

10 **THIRD CAUSE OF ACTION**

11 **Private Nuisance**

12 20. All preceding paragraphs are incorporated herein by reference.

13 21. Plaintiff owns the property at issue in fee.

14 22. The City created a condition that was an obstruction to the free use of property so as
15 to interfere with the comfortable enjoyment of life or property.

16 23. The City's conduct, which was intentional, unreasonable and/or negligent created was
17 the result of an abnormally dangerous activity.

18 24. The City-created condition substantially interfered with Plaintiff's use or enjoyment
19 of its land.

20 25. An ordinary person would be reasonably annoyed or disturbed by the City's conduct.

21 26. Plaintiff did not consent to the City's conduct.

22 27. Plaintiff was harmed.

23 28. The City's conduct was a substantial factor in causing Plaintiff's harm.

24 29. The seriousness of the harm outweighs the public benefit of the City's conduct.

25 **FOURTH CAUSE OF ACTION**

26 **Negligence**

27 30. All preceding paragraphs are incorporated herein by reference.

28 31. The City was negligent.

- 1 32. Plaintiff was harmed.
2 33. The City's conduct was a substantial factor in causing Plaintiff's harm.

3 **PRAYER FOR RELIEF**

4 Whereas Plaintiff prays for relief as follows:

- 5 1. Just compensation in the amount of \$300 million;
6 2. Damages, both general and specific;
7 3. Cost recovery;
8 4. Payment of attorneys' fees; and
9 5. Such and other relief as the Court may deem appropriate.

10 Dated: August 19, 2024

THORSNES BARTOLOTTA McGUIRE LLP

11
12 By: 

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