

ENDORSED
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FILED LYLA CORFMAN, CLERK
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DEPUTY

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9 Attorneys for Plaintiffs

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF IMPERIAL**

13 ANNA B. BONDY; DORIS BILYEU;
14 HARRY & MARCELLE CROWLEY;
15 JOSEPH DAVELLO; KENNETH &
16 PAULINE GRISSOM; DOROTHY HAGAR;
17 GERALD HANSEN; GLADYSE MOYER;
18 MERLIN & IDRA SMITH; and
19 KENNETH & MARION STILSON,

20 Plaintiffs,

21 vs.

22 IMPERIAL IRRIGATION DISTRICT,
23 A Public Irrigation District, COACHELLA
24 VALLEY WATER DISTRICT, A Public
25 Irrigation District, and DOES I through
26 XX, inclusive,

27 Defendants.

CASE NUMBER: **90737**

COMPLAINT TO RECOVER
DAMAGES FOR DEPRIVATION OF
RIGHTS AND PROPERTY WITHOUT
DUE PROCESS OR JUST
COMPENSATION; NUISANCE;
TRESPASS; AND NEGLIGENT
PROPERTY DAMAGE

28
29 **AS A FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS,**
30 **AND EACH OF THEM, FOR INVERSE CONDEMNATION, ALL**
31 **NAMED PLAINTIFFS ALLEGE AS FOLLOWS:**

32 1. This is an action arising under Article I, Section 19 of the Constitution
33 of the State of California, and the 14th Amendment to the Constitution of the
34 United States, to recover damages for the deprivation of rights and property
35 without due process or just compensation.

1 2. At all times herein mentioned, Plaintiffs were and are citizens of the
2 United States, residents of the State of California, and owners of properties,
3 property rights, and businesses located near the Salton Sea in Imperial and
4 Riverside Counties of California.

5 3. The true names and capacities of defendants named herein as DOES I
6 through XX are unknown to Plaintiffs, who therefore sue them by such fictitious
7 names, and at such time as their true names, capacities and involvements become
8 known, Plaintiffs will pray leave to amend this complaint. Plaintiffs are informed
9 and believe and thereon allege, that each of the said fictitiously named defendants
10 is responsible in some manner for the events, acts, omissions, and damages
11 suffered by Plaintiffs as hereinafter alleged.

12 4. Plaintiffs are informed and believe and thereon allege that at all times
13 herein mentioned each of the Defendants sued herein were and are agents and
14 employees of each of the other Defendants, and in doing the things as hereinafter
15 alleged, were acting within the course and scope of such agency and employment.

16 5. At all times herein mentioned, Defendants IMPERIAL IRRIGATION
17 DISTRICT and COACHELLA VALLEY WATER DISTRICT were and are public
18 entities in the State of California, delivering water for the purposes of irrigation,
19 serving the water needs of the County of Imperial and the Coachella Valley area of
20 the County of Riverside. Each of said Defendants is duly organized and existing
21 under the laws of the State of California with their principal bases of operation
22 located in said Counties respectively.

23 6. At all times herein mentioned, the Defendants IMPERIAL IRRIGATION
24 DISTRICT, COACHELLA VALLEY WATER DISTRICT, and DOES I -- XX were and
25 are owners, operators, managers, directors, and in control of an extensive system
26 of irrigation canals, ditches, dams, dikes, rivers, structures, works and equipment
27 therefore serving to divert water from the Colorado River and the All-American
28 Canal to Imperial and Riverside Counties for domestic and agricultural use. Said

1 water, and that which is unused, is thereafter directed to and drained into the
2 Salton Sea, an inland salt lake located partially in each of said counties, and
3 which is approximately thirty-four (34) miles long and ten (10) miles wide.

4 7. At all times herein mentioned, the Salton Sea has been open to
5 members of the public for recreational use, boating, fishing, and swimming; and
6 sections thereof are set aside for use by the United States Military forces, and as a
7 breeding ground and habitat for birds and wildlife. Plaintiff property owners and
8 lessees, as well as thousands of other citizens, have built and established homes,
9 towns and businesses on their property surrounding said sea, and have been and
10 are entitled to the full enjoyment and use of said properties without interference
11 and the taking of said properties for some unspecified public interest without due
12 process or just compensation.

13 8. At all times herein mentioned, the surface level elevation of the
14 Salton Sea has been and is determined by the differences in its natural evapora-
15 tive capacity and the amount of water diverted or drained into it by Defendants.
16 Natural drainage from the watershed of surrounding mountains and periodic
17 rainfall contribute, but is generally predictable and negligible in its effect.

18 9. At all times herein mentioned, said Defendants have been, and are,
19 capable of controlling the surface level of said Salton Sea within reasonable
20 tolerances by the exercise of proper management and control of the waters directly
21 diverted to and from it, and the regulation of drainage waters for domestic and
22 agricultural use.

23 10. Defendants have so conducted, controlled, managed and supervised
24 their water diversion and delivery operations within each of said Counties so as to
25 cause and continue to cause and allow greater quantities of water to be deposited
26 in said Salton Sea than can be naturally evaporated in any given period, and so as
27 to cause the surface elevation to rise and continue rising and to partially or
28 completely inundate the land, interests and businesses of the Plaintiffs.

1 11. The rising level of the Salton Sea has caused, and is causing, continu-
2 ous damage and insult to Plaintiffs' personal property, lands, leasehold interests,
3 businesses, and rights; has lowered property values, and amounts to the taking of
4 said properties and interests without due process of law and just compensation,
5 all in violation of Plaintiffs' rights under the Constitution of the State of California.

6 12. At no time to date have the Defendants herein established a valid
7 public use and necessity for the taking or damaging of Plaintiffs' properties, nor
8 have any attempts been made by them to comply with the California laws on
9 Eminent Domain and to compensate Plaintiffs for the damages inflicted and pro-
10 perties taken.

11 13. As a direct and proximate result of the acts and omissions of the
12 Defendants as aforesaid, Plaintiffs' lands, interests and businesses have been
13 damaged and taken, and continue to be damaged and taken in monetary amounts
14 in excess of the jurisdiction of this court. The exact amount of damage as to each
15 individual plaintiff remains unknown, as that damage is of a continuous nature,
16 the values of the property and property interests have been subject to fluctuation,
17 and in accordance with proof, Plaintiffs will ask leave to amend this complaint to
18 more specifically set forth said amounts when the same become certain.

19 14. In accordance with the laws of the State of California, Plaintiffs have
20 served claims for damages upon each of said public entity defendants. True and
21 correct copies of said claims are attached hereto as Exhibit A.

22 15. Plaintiffs have retained Sutherland & Gerber as attorneys to prose-
23 cute the within action and have incurred and will continue to incur attorneys'
24 fees. The exact amount of said attorneys' fees is unknown and Plaintiffs pray
25 leave to request attorneys' fees according to proof.

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1 **AS A SECOND, SEPARATE, AND DISTINCT CAUSE OF ACTION**
2 **AGAINST THE DEFENDANTS AND EACH OF THEM FOR**
3 **DANGEROUS CONDITION OF PUBLIC PROPERTY,**
4 **PLAINTIFFS ALLEGE AS FOLLOWS:**

5 16. Plaintiffs reallege and incorporate herein each and every allegation
6 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of their First
7 Cause of Action and further allege as follows:

8 17. At all times herein mentioned, the Defendants and each of them, have
9 so acted and have so managed, operated, maintained and controlled their water
10 systems. canals and diversion works so as to create a dangerous condition of
11 public property in that great quantities of water have been and are being stored
12 and transported across said public property and wasted and deposited into the
13 Salton Sea with the result that said Sea has risen and continues to rise and
14 inundate Plaintiffs' lands and properties. Said use of such water constitutes a
15 waste of the natural resources of the State of California contrary to the provisions
16 of Article 10, Section 2 of the Constitution of the State of California, and is against
17 public policy.

18 18. In addition to the damages suffered by Plaintiffs to their homes,
19 properties, interests, and businesses as a result of the nuisance created and
20 maintained by Defendants aforesaid Plaintiffs have suffered great mental, emo-
21 tional, and physical distress, fear, embarrassment, hardship, personal discomfort
22 and inconvenience, and are therefore entitled to general damages in amounts as
23 yet unascertained. At such time as said damage amounts may be ascertained,
24 Plaintiffs will pray leave to amend this complaint.

25
26 **AS A THIRD, SEPARATE, AND DISTINCT CAUSE OF ACTION**
27 **AGAINST THE DEFENDANTS AND EACH OF THEM FOR NUISANCE,**
28 **PLAINTIFFS ALLEGE AS FOLLOWS:**

1 19. Plaintiffs reallege and incorporate herein each and every allegation
2 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of their First
3 Cause of Action, and Paragraph 18 of their Second Cause of Action and further
4 allege as follows:

5 20. The rising of the Salton Sea constitutes a nuisance within the mean-
6 ing of Sections 3479, 3480 and 3481 of the California Civil Code, in that it has
7 been specially injurious to the Plaintiffs and is an obstruction to the free use of
8 Plaintiffs' property and the operation of business, interferes with the comfortable
9 enjoyment of said property and free passage or use thereof, as well as public
10 streets, highways, and waste disposal systems adjacent thereto.

11 21. Said nuisance affects at the same time a considerable number of
12 persons in the communities surrounding the Sea and in the vicinity of Plaintiffs'
13 property, and is specially injurious to Plaintiffs, as well as these others, in that
14 their properties have become or are threatened with inundation and destruction,
15 causing great expenditures for repair and protection, loss of personal property,
16 lost profits from business and reduction in real and personal property values.

17 22. Plaintiffs have made demand upon Defendants to abate such nui-
18 sance, but Defendants have failed and refused to act and claim an unrestricted
19 authority to continue their practices.

20
21 **AS A FOURTH, SEPARATE AND DISTINCT CAUSE OF ACTION**
22 **AGAINST THE DEFENDANTS FOR TRESPASS,**
23 **PLAINTIFFS ALLEGE AS FOLLOWS:**

24 23. Plaintiffs reallege and incorporate herein each and every allegation
25 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of its First Cause
26 of Action, and Paragraph 18 of their Second Cause of Action, and further allege as
27 follows:

28 24. Defendants and each of them, have so acted and so managed,

1 operated, maintained and controlled their water systems, canals, and diversion
2 works so as to cause and allow a precipitous rise in the surface level of the Salton
3 Sea, causing water therefrom to invade and trespass upon the lands, property
4 interests, and businesses of Plaintiffs. Plaintiffs continue to suffer ongoing loss by
5 virtue of the inundation and threat of further inundation, and have been damaged
6 thereby in an amount in excess of the jurisdiction of this court. The exact
7 amounts of damage are unknown to Plaintiffs as said trespass is continuing and
8 assessment of all factors is not possible at this time. At such time as all factors
9 become known and the damages become subject to calculation, Plaintiffs will pray
10 leave to amend its complaint to so state.

11
12 **AS A FIFTH, SEPARATE AND DISTINCT CAUSE OF ACTION**
13 **AGAINST THE DEFENDANTS FOR NEGLIGENCE,**
14 **PLAINTIFFS ALLEGE AS FOLLOWS:**

15 25. Plaintiffs reallege and incorporate herein each and every allegation
16 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of their First
17 Cause of Action, and Paragraph 18 of their Second Cause of Action, and further
18 allege as follows:

19 26. Defendants and each of them, have so negligently and carelessly
20 handled the water within their control and further negligently and carelessly
21 managed, maintained, controlled and operated their irrigation system, canals,
22 dams, dikes, diversions and drainage works so as to cause the surface level of the
23 Salton Sea to rise and invade the lands, properties, interests and business of the
24 Plaintiffs.

25 27. As a direct and proximate result of the negligent and careless acts of
26 the Defendants as aforesaid, Plaintiffs have suffered damage to their personal
27 property, property interests, lands, and business in an amount in excess of the
28 jurisdiction of this court. As the said acts of the Defendants are of a continuous

1 nature and the damages are also continuing, the exact amount of such damages
2 are unknown to Plaintiffs, who will seek leave to amend their complaint at such
3 time as said damages are capable of exact calculation.

4 WHEREFORE, Plaintiffs pray for judgment against the Defendants and in
5 favor of Plaintiffs as follows:

6 **AS TO THE FIRST CAUSE OF ACTION**

- 7 1. For compensation for the personal property, lands, interests, and
8 business taken and damages inflicted according to proof;
9 2. For interest thereon as the Court may determine;
10 3. For costs of suit incurred herein;
11 4. For such other and further relief to which Plaintiffs may be entitled as
12 a matter of law and equity and which the Court deems just; and
13 5. For necessary and reasonable attorneys' fees incurred herein.

14 **AS TO THE SECOND CAUSE OF ACTION**

- 15 1. For damages caused to Plaintiffs' personal property, property, lands,
16 property interests, and businesses according to proof;
17 2. For interest thereon from such dates in each individual case as the
18 Court may determine;
19 3. For general damages according to proof;
20 4. For an order of this Court restraining the waste, unreasonable use
21 and unreasonable method of use of the waters of the State;
22 5. For costs of suit incurred herein;
23 6. For such other and further relief as Plaintiffs may be entitled as a
24 matter of law and equity, and to which the Court seems just; and
25 7. For necessary and reasonable attorneys' fees incurred herein.

26 **AS TO THE THIRD CAUSE OF ACTION**

- 27 1. For damages caused to Plaintiffs' personal property, lands, property
28 interests, and business according to proof;

- 1 2. For interest thereon as the Court may determine;
- 2 3. For general damages according to proof;
- 3 4. For an order of this Court restraining the waste, unreasonable use
- 4 and unreasonable method of use of the waters of the State;
- 5 5. For costs of suit incurred herein;
- 6 6. For such other and further relief as Plaintiffs may be entitled as a
- 7 matter of law and equity, and to which the Court seems just; and
- 8 7. For necessary and reasonable attorneys' fees incurred herein.

9 **AS TO THE FOURTH CAUSE OF ACTION**

- 10 1. For damages caused to Plaintiffs' personal property, lands, property
- 11 interests, and businesses according to proof;
- 12 2. For interest thereon as the Court may determine;
- 13 3. For general damages according to proof;
- 14 4. For an order of this Court restraining the waste, unreasonable use
- 15 and unreasonable method of use of the waters of the State.
- 16 5. For costs of suit incurred herein;
- 17 6. For such other and further relief as Plaintiffs may be entitled as a
- 18 matter of law and equity, and to which the Court seems just; and
- 19 7. For necessary and reasonable attorneys' fees incurred herein.

20 **AS TO THE FIFTH CAUSE OF ACTION**

- 21 1. For damages caused to Plaintiffs' personal property, lands, property
- 22 interests, and businesses according to proof;
- 23 2. For interest thereon as the Court may determine;
- 24 3. For general damages according to proof;
- 25 4. For an order of this Court restraining the waste, unreasonable use
- 26 and unreasonable method of use of the waters of the State.
- 27 5. For costs of suit incurred herein;
- 28 6. For such other and further relief as Plaintiffs may be entitled as a

1 matter of law and equity, and to which the Court deems just; and

2 7. For necessary and reasonable attorneys' fees incurred herein.

3 DATED: August 14, 1996.

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SUTHERLAND & GERBER
A Professional Corporation

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BY: 

Lowell F. Sutherland
Attorney for Plaintiffs

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9 Attorneys for Plaintiffs

ENDORSED
FILED JAN 22 1998
LYLA CORFMAN, CLERK
BY DORA SANTEZ
DEPUTY

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF IMPERIAL**

13 RONALD L. CLEVINGER & ARDYCE E.
14 CLEVINGER; CARL HOUSTON &
15 GLADYS HOUSTON; NEIL JOHNSON;
16 JOHN W. WRIGHT & BARBARA WRIGHT,

17 Plaintiffs,

18 vs.

19 IMPERIAL IRRIGATION DISTRICT,
20 A Public Irrigation District, COACHELLA
21 VALLEY WATER DISTRICT, A Public
22 Irrigation District, and DOES I through
23 XX, inclusive,

24 Defendants.

CASE NUMBER: 95059

COMPLAINT TO RECOVER
DAMAGES FOR DEPRIVATION OF
RIGHTS AND PROPERTY WITHOUT
DUE PROCESS OR JUST
COMPENSATION; NUISANCE;
TRESPASS; AND NEGLIGENT
PROPERTY DAMAGE

25 **AS A FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS,**
26 **AND EACH OF THEM, FOR INVERSE CONDEMNATION, ALL**
27 **NAMED PLAINTIFFS ALLEGE AS FOLLOWS:**

28 1. This is an action arising under Article I, Section 19 of the Constitution
of the State of California, and the 14th Amendment to the Constitution of the
United States, to recover damages for the deprivation of rights and property
without due process or just compensation.

2. At all times herein mentioned, Plaintiffs were and are citizens of the

1 United States, residents of the State of California, and owners of properties,
2 property rights, and businesses located near the Salton Sea in Imperial and
3 Riverside Counties of California.

4 3. The true names and capacities of defendants named herein as DOES I
5 through XX are unknown to Plaintiffs, who therefore sue them by such fictitious
6 names, and at such time as their true names, capacities and involvements become
7 known, Plaintiffs will pray leave to amend this complaint. Plaintiffs are informed
8 and believe and thereon allege, that each of the said fictitiously named defendants
9 is responsible in some manner for the events, acts, omissions, and damages
10 suffered by Plaintiffs as hereinafter alleged.

11 4. Plaintiffs are informed and believe and thereon allege that at all times
12 herein mentioned each of the Defendants sued herein were and are agents and
13 employees of each of the other Defendants, and in doing the things as hereinafter
14 alleged, were acting within the course and scope of such agency and employment.

15 5. At all times herein mentioned, Defendants IMPERIAL IRRIGATION
16 DISTRICT and COACHELLA VALLEY WATER DISTRICT were and are public
17 irrigation districts in the State of California, serving the water needs of the County
18 of Imperial and the Coachella Valley area of the County of Riverside. Each of said
19 Defendants is duly organized and existing under the laws of the State of
20 California with their principal bases of operation located in said Counties
21 respectively.

22 6. At all times herein mentioned, the Defendants IMPERIAL IRRIGATION
23 DISTRICT, COACHELLA VALLEY WATER DISTRICT, and DOES I -- XX were and
24 are owners, operators, managers, directors, and in control of an extensive system
25 of irrigation canals, ditches, dams, dikes, rivers, structures, works and equipment
26 therefore serving to divert water from the Colorado River and the All-American
27 Canal to Imperial and Riverside Counties for domestic and agricultural use. Said
28 water, and that which is unused, is thereafter directed to and drained into the

1 Salton Sea, an inland salt lake located partially in each of said counties, and
2 which is approximately thirty-four (34) miles long and ten (10) miles wide.

3 7. At all times herein mentioned, the Salton Sea has been open to
4 members of the public for recreational use, boating, fishing, and swimming; and
5 sections thereof are set aside for use by the United States Military forces, and as a
6 breeding ground and habitat for birds and wildlife. Plaintiff property owners and
7 lessees, as well as thousands of other citizens, have built and established homes,
8 towns and businesses on their property surrounding said sea, and have been and
9 are entitled to the full enjoyment and use of said properties without interference
10 and the taking of said properties for some unspecified public interest without due
11 process or just compensation.

12 8. At all times herein mentioned, the surface level elevation of the
13 Salton Sea has been and is determined by the differences in its natural evapora-
14 tive capacity and the amount of water diverted or drained into it by Defendants.
15 Natural drainage from the watershed of surrounding mountains and periodic
16 rainfall contribute, but is generally predictable and negligible in its effect.

17 9. At all times herein mentioned, said Defendants have been, and are,
18 capable of controlling the surface level of said Salton Sea within reasonable
19 tolerances by the exercise of proper management and control of the waters directly
20 diverted to and from it, and the regulation of drainage waters for domestic and
21 agricultural use.

22 10. Defendants have so conducted, controlled, managed and supervised
23 their water diversion and delivery operations within each of said Counties so as to
24 cause and continue to cause and allow greater quantities of water to be deposited
25 in said Salton Sea than can be naturally evaporated in any given period, and so as
26 to cause the surface elevation to rise and continue rising and to partially or
27 completely inundate the land, interests and businesses of the Plaintiffs.

28 11. The rising level of the Salton Sea has caused, and is causing, continu-

1 ous damage and insult to Plaintiffs' personal property, lands, leasehold interests,
2 businesses, and rights; has lowered property values, and amounts to the taking of
3 said properties and interests without due process of law and just compensation,
4 all in violation of Plaintiffs' rights under the Constitution of the State of California.

5 12. At no time to date have the Defendants herein established a valid
6 public use and necessity for the taking or damaging of Plaintiffs' properties, nor
7 have any attempts been made by them to comply with the California laws on
8 Eminent Domain and to compensate Plaintiffs for the damages inflicted and pro-
9 perties taken.

10 13. As a direct and proximate result of the acts and omissions of the
11 Defendants as aforesaid, Plaintiffs' lands, interests and businesses have been
12 damaged and taken, and continue to be damaged and taken in monetary amounts
13 in excess of the jurisdiction of this court. The exact amount of damage as to each
14 individual plaintiff remains unknown, as that damage is of a continuous nature,
15 the values of the property and property interests have been subject to fluctuation,
16 and in accordance with proof, Plaintiffs will ask leave to amend this complaint to
17 more specifically set forth said amounts when the same become certain.

18 14. In accordance with the laws of the State of California, Plaintiffs have
19 served claims for damages upon each of said public entity defendants. True and
20 correct copies of said claims are attached hereto as Exhibit A.

21 15. Plaintiffs have retained Sutherland & Gerber as attorneys to prose-
22 cute the within action and have incurred and will continue to incur attorneys'
23 fees. The exact amount of said attorneys' fees is unknown and Plaintiffs pray
24 leave to request attorneys' fees according to proof.

25 **AS A SECOND, SEPARATE, AND DISTINCT CAUSE OF ACTION**

26 **AGAINST THE DEFENDANTS AND EACH OF THEM FOR**

27 **DANGEROUS CONDITION OF PUBLIC PROPERTY,**

28 **PLAINTIFFS RONALD L. CLEVINGER & ARDYCE E.**

1 **CLEVINGER; CARL HOUSTON & GLADYS HOUSTON;**

2 **and JOHN W. WRIGHT & BARBARA WRIGHT**

3 **ALLEGE AS FOLLOWS:**

4 16. Plaintiffs reallege and incorporate herein each and every allegation
5 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of their First
6 Cause of Action and further allege as follows:

7 17. At all times herein mentioned, the Defendants and each of them, have
8 so acted and have so managed, operated, maintained and controlled their water
9 systems, canals and diversion works so as to create a dangerous condition of
10 public property in that great quantities of water have been and are being stored
11 and transported across said public property and wasted and deposited into the
12 Salton Sea with the result that said Sea has risen and continues to rise and
13 inundate Plaintiffs' lands and properties. Said use of such water constitutes a
14 waste of the natural resources of the State of California contrary to the provisions
15 of Article 10, Section 2 of the Constitution of the State of California, and is against
16 public policy.

17 18. In addition to the damages suffered by Plaintiffs to their homes,
18 properties, interests, and businesses as a result of the nuisance created and
19 maintained by Defendants aforesaid Plaintiffs have suffered great mental, emo-
20 tional, and physical distress, fear, embarrassment, hardship, personal discomfort
21 and inconvenience, and are therefore entitled to general damages in amounts as
22 yet unascertained. At such time as said damage amounts may be ascertained,
23 Plaintiffs will pray leave to amend this complaint.

24 **AS A THIRD, SEPARATE, AND DISTINCT CAUSE OF ACTION**
25 **AGAINST THE DEFENDANTS AND EACH OF THEM FOR NUISANCE,**

26 **PLAINTIFFS RONALD L. CLEVINGER & ARDYCE E. CLEVINGER;**

27 **CARL HOUSTON & GLADYS HOUSTON; and JOHN W. WRIGHT**

28 **& BARBARA WRIGHT ALLEGE AS FOLLOWS:**

1 19. Plaintiffs reallege and incorporate herein each and every allegation
2 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of their First
3 Cause of Action, and Paragraph 18 of their Second Cause of Action and further
4 allege as follows:

5 20. The rising of the Salton Sea constitutes a nuisance within the mean-
6 ing of Sections 3479, 3480 and 3481 of the California Civil Code, in that it has
7 been specially injurious to the Plaintiffs and is an obstruction to the free use of
8 Plaintiffs' property and the operation of business, interferes with the comfortable
9 enjoyment of said property and free passage or use thereof, as well as public
10 streets, highways, and waste disposal systems adjacent thereto.

11 21. Said nuisance affects at the same time a considerable number of
12 persons in the communities surrounding the Sea and in the vicinity of Plaintiffs'
13 property, and is specially injurious to Plaintiffs, as well as these others, in that
14 their properties have become or are threatened with inundation and destruction,
15 causing great expenditures for repair and protection, loss of personal property,
16 lost profits from business and reduction in real and personal property values.

17 22. Plaintiffs have made demand upon Defendants to abate such nui-
18 sance, but Defendants have failed and refused to act and claim an unrestricted
19 authority to continue their practices.

20 **AS A FOURTH, SEPARATE AND DISTINCT CAUSE OF**
21 **ACTION AGAINST THE DEFENDANTS FOR TRESPASS,**
22 **PLAINTIFFS RONALD L. CLEVINGER & ARDYCE E.**
23 **CLEVINGER; CARL HOUSTON & GLADYS HOUSTON;**
24 **and JOHN W. WRIGHT & BARBARA WRIGHT ALLEGE**

25 **AS FOLLOWS:**

26 23. Plaintiffs reallege and incorporate herein each and every allegation
27 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of its First Cause
28 of Action, and Paragraph 18 of their Second Cause of Action, and further allege as

1 follows:

2 24. Defendants and each of them, have so acted and so managed,
3 operated, maintained and controlled their water systems, canals, and diversion
4 works so as to cause and allow a precipitous rise in the surface level of the Salton
5 Sea, causing water therefrom to invade and trespass upon the lands, property
6 interests, and businesses of Plaintiffs. Plaintiffs continue to suffer ongoing loss by
7 virtue of the inundation and threat of further inundation, and have been damaged
8 thereby in an amount in excess of the jurisdiction of this court. The exact
9 amounts of damage are unknown to Plaintiffs as said trespass is continuing and
10 assessment of all factors is not possible at this time. At such time as all factors
11 become known and the damages become subject to calculation, Plaintiffs will pray
12 leave to amend its complaint to so state.

13 **AS A FIFTH, SEPARATE AND DISTINCT CAUSE OF**
14 **ACTION AGAINST THE DEFENDANTS FOR NEGLIGENCE,**
15 **PLAINTIFFS RONALD L. CLEVINGER & ARDYCE E.**
16 **CLEVINGER; CARL HOUSTON & GLADYS HOUSTON;**
17 **and JOHN W. WRIGHT & BARBARA WRIGHT ALLEGE**

18 **AS FOLLOWS:**

19 25. Plaintiffs reallege and incorporate herein each and every allegation
20 contained in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, and 15 of their First
21 Cause of Action, and Paragraph 18 of their Second Cause of Action, and further
22 allege as follows:

23 26. Defendants and each of them, have so negligently and carelessly
24 handled the water within their control and further negligently and carelessly
25 managed, maintained, controlled and operated their irrigation system, canals,
26 dams, dikes, diversions and drainage works so as to cause the surface level of the
27 Salton Sea to rise and invade the lands, properties, interests and business of the
28 Plaintiffs.

- 1 7. For necessary and reasonable attorneys' fees incurred herein.

2 **AS TO THE THIRD CAUSE OF ACTION**

3 1. For damages caused to Plaintiffs' personal property, lands, property
4 interests, and business according to proof;

5 2. For interest thereon as the Court may determine;

6 3. For general damages according to proof;

7 4. For an order of this Court restraining the waste, unreasonable use
8 and unreasonable method of use of the waters of the State;

9 5. For costs of suit incurred herein;

10 6. For such other and further relief as Plaintiffs may be entitled as a
11 matter of law and equity, and to which the Court seems just; and

12 7. For necessary and reasonable attorneys' fees incurred herein.

13 **AS TO THE FOURTH CAUSE OF ACTION**

14 1. For damages caused to Plaintiffs' personal property, lands, property
15 interests, and businesses according to proof;

16 2. For interest thereon as the Court may determine;

17 3. For general damages according to proof;

18 4. For an order of this Court restraining the waste, unreasonable use
19 and unreasonable method of use of the waters of the State.

20 5. For costs of suit incurred herein;

21 6. For such other and further relief as Plaintiffs may be entitled as a
22 matter of law and equity, and to which the Court seems just; and

23 7. For necessary and reasonable attorneys' fees incurred herein.

24 **AS TO THE FIFTH CAUSE OF ACTION**

25 1. For damages caused to Plaintiffs' personal property, lands, property
26 interests, and businesses according to proof;

27 2. For interest thereon as the Court may determine;

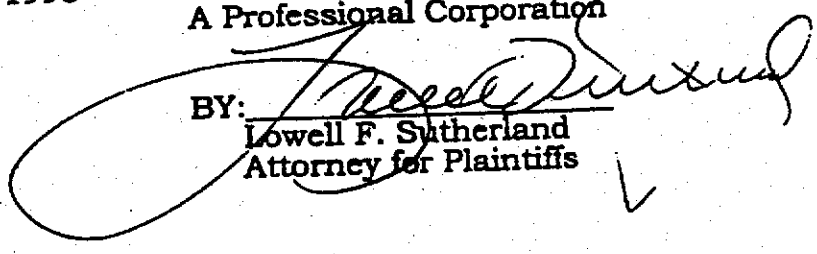
28 3. For general damages according to proof;

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- 4. For an order of this Court restraining the waste, unreasonable use and unreasonable method of use of the waters of the State.
- 5. For costs of suit incurred herein;
- 6. For such other and further relief as Plaintiffs may be entitled as a matter of law and equity, and to which the Court deems just; and
- 7. For necessary and reasonable attorneys' fees incurred herein.

DATED: January 22, 1998

SUTHERLAND & GERBER
A Professional Corporation

BY: 
Lowell F. Sutherland
Attorney for Plaintiffs