

STEPHAN C. VOLKER (CSB #63093)  
 DANIEL P. GARRETT-STEINMAN (CSB #269146)  
 MARCUS BENJAMIN EICHENBERG (CSB #270893)  
 LAUREN E. PAPPONE (CSB #284806)  
 LAW OFFICES OF STEPHAN C. VOLKER  
 436 14<sup>th</sup> Street, Suite 1300  
 Oakland, California 94612  
 Tel: 510/496-0600  
 Fax: 510/496-1366

Attorneys for Petitioners/Plaintiffs  
 NORTH COAST RIVERS ALLIANCE, PACIFIC COAST  
 FEDERATION OF FISHERMEN'S ASSOCIATIONS,  
 SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,  
 and WINNEMEM WINTU TRIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NORTH COAST RIVERS ALLIANCE, PACIFIC  
 COAST FEDERATION OF FISHERMEN'S  
 ASSOCIATIONS, SAN FRANCISCO CRAB BOAT  
 OWNERS ASSOCIATION, and the WINNEMEM  
 WINTU TRIBE,

Petitioners/Plaintiffs,

v.

DELTA STEWARDSHIP COUNCIL, and  
 DOES I-XX, inclusive,

Respondents/Defendants,

DOES XXI-L, inclusive

Real Parties in Interest

Case No.

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

**CEQA CASE**

**FILED BY FACSIMILE**

Petitioners North Coast Rivers Alliance, *et al.*, hereby petition the Court for a writ of mandate against respondent Delta Stewardship Council and by this verified petition allege as follows:

**INTRODUCTION**

1. This is a public interest citizen suit to enforce California's environmental laws and protect the Delta from imminent ecologic collapse. Petitioners bring this action to challenge the Delta Stewardship Council's ("Council's") approval of its Final Delta Plan ("Delta Plan" or "Project") and certification of its Program Environmental Impact Report ("PEIR") on May 16, 2013. In taking these

1 actions, the Council violated the California Environmental Quality Act ("CEQA"), Public Resources  
2 Code section 21000 *et seq.*, the Sacramento-San Joaquin Delta Reform Act of 2009 ("Delta Reform  
3 Act"), Water Code section 85000 *et seq.*, and the Public Trust Doctrine.

4 2. CEQA requires the Council to fully examine the impacts of increasing Delta exports, and  
5 to carefully consider alternatives that would avoid and reduce those impacts. Contrary to CEQA, the  
6 Council's PEIR does neither. Although it purports to analyze the environmental impacts of the Delta  
7 Plan as required by CEQA, its excessive generality precludes meaningful public review, and it fails to  
8 adequately consider feasible alternatives and mitigation measures that would prevent further ecologic  
9 collapse. Because the PEIR falls far short of achieving CEQA's twin mandates of identifying and  
10 avoiding significant environmental harm, it violates CEQA.

11 3. The Delta Reform Act requires the Council to complete a Delta Plan to achieve the "co-  
12 equal goals" of "providing a more reliable water supply for California and protecting, restoring, and  
13 enhancing the Delta ecosystem." Water Code §§ 85054, 85300. The Delta Plan does not achieve these  
14 goals. Instead, it accommodates unsustainable increases in Delta exports that will thwart protection and  
15 restoration of the Delta ecosystem. Because the Delta Plan will destroy rather than save the Delta's  
16 imperiled fish and wildlife, it violates the Delta Reform Act.

17 4. The Public Trust Doctrine protects the Delta's imperiled fish and wildlife from avoidable  
18 harm whenever it is feasible to do so. Contrary to this mandate, the Delta Plan accommodates  
19 unsustainable increases in Delta exports that will needlessly harm public trust resources, and dismisses  
20 from consideration feasible alternatives and mitigation measures that would protect and restore the  
21 Delta's ecological functions. Because the Delta Plan sacrifices rather than saves the Delta's fish and  
22 wildlife, it violates the Public Trust Doctrine.

### 23 VENUE AND JURISDICTION

24 5. This Court has jurisdiction over this proceeding pursuant to Code of Civil Procedure  
25 ("CCP") sections 526 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate), and 1094.5  
26 (administrative mandate); Public Resources Code ("PRC") sections 21168 and 21168.5 (mandamus  
27 review); and article VI, section 10 of the California Constitution.

28 6. Venue is proper in this Court pursuant to CCP sections 393 (actions against public

1 officers) and 395 (actions generally) because the Council's offices are located in Sacramento.

2 7. Pursuant to CCP section 388, petitioners are serving the California Attorney General with  
3 a copy of this verified petition and complaint. Consistent with PRC section 21167.5, petitioners timely  
4 served the Council with notice of this suit.

#### 5 PARTIES

6 8. Petitioner NORTH COAST RIVERS ALLIANCE ("North Coast Rivers") is a non-profit  
7 unincorporated association with members throughout Northern California. North Coast Rivers was  
8 formed for the purpose of protecting California's rivers and their watersheds from the adverse effects of  
9 excessive water diversions, ill-planned urban development, harmful resource extraction, pollution, and  
10 other forms of degradation. Its members use and enjoy California's rivers and watersheds for  
11 recreational, aesthetic, scientific study, and related non-consumptive uses. The interests of North Coast  
12 Rivers and its members have been, are being, and unless the relief requested herein is granted, will be  
13 adversely affected and injured by respondent's approval of the Plan and certification of its inadequate  
14 PEIR.

15 9. Petitioner PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS  
16 ("Pacific Coast Fishermen") is a nonprofit membership organization incorporated in 1976 with  
17 headquarters located in San Francisco, California. Pacific Coast Fishermen is composed of more than 20  
18 separate commercial fishing and vessel owners' associations situated along the West Coast of the United  
19 States. By virtue of its combined membership, the Pacific Coast Fishermen is the single largest  
20 commercial fishing organization on the West Coast. Pacific Coast Fishermen represents the majority of  
21 California's organized commercial salmon fishermen and has been an active advocate for the protection  
22 of Pacific salmon for more than 20 years. Pacific Coast Fishermen and its members would be harmed by  
23 the proposed Plan because it would threaten their commercial fishing livelihoods, which depend on  
24 sustainable management of the salmonid fisheries resources of the Delta and connected ecosystems.

25 10. Petitioner SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION ("San Francisco  
26 Fishermen") is a century-old association of owners and operators of small, family owned fishing boats  
27 that catch Dungeness crab, wild California King salmon, Pacific herring, and other species that live in and  
28 depend upon the cold waters of the Pacific Ocean. San Francisco Fishermen is also actively involved in

1 community education and advocacy concerning fisheries resources legislation to ensure that the rich  
2 heritage of commercial fishing in the Bay Area will survive for future generations. San Francisco  
3 Fishermen and its members would be harmed by the proposed Plan because it would threaten their  
4 continued historic use and enjoyment of the fisheries resources of the Delta and its connected ecosystems.

5 11. Petitioner WINNEMEM WINTU TRIBE is a Native American Tribe whose aboriginal  
6 territory encompasses the upper watersheds of the Sacramento River including the Merced River. The  
7 Winnemem Wintu Tribe was traditionally dependent on salmon fishing for both subsistence and cultural  
8 purposes, and maintains a deep cultural, spiritual and recreational interest in the continued viability of  
9 California's salmon runs that pass through the Sacramento-San Joaquin River Delta ("Delta"). The  
10 Winnemem Wintu Tribe is a strong proponent of Delta restoration, and is adversely affected by the  
11 continuing reduction in water flows, degradation of water quality, destruction of fish and wildlife species,  
12 and other environmental harms that implementation of the Plan will allow.

13 12. Respondent DELTA STEWARDSHIP COUNCIL ("Council") is a California public  
14 agency established by the Delta Reform Act and required by that Act to protect and restore the fish and  
15 wildlife of the Delta. Its approval of the Delta Plan is subject to and violated the requirements of the  
16 Delta Reform Act, CEQA, and the Public Trust Doctrine. The Council is the lead agency under CEQA  
17 for environmental review of the Delta Plan.

18 13. The true names and capacities of respondents DOES I-XX, inclusive, are unknown to  
19 petitioners who therefore sue such respondents by fictitious names pursuant to CCP section 474.  
20 Petitioners are informed and believe, and based on such information and belief allege, that the fictitiously  
21 named respondents are public officials or agencies who are responsible, in whole or in part, for the  
22 approval and implementation of the Delta Plan. Petitioners will, with leave of Court if necessary, amend  
23 this Verified Petition if and when the true names and capacities of said Doe respondents have been  
24 ascertained.

25 14. The Council did not identify any real parties in interest in its Notice of Determination  
26 pursuant to PRC section 21167.6.5(a), and petitioners are not otherwise aware that any real parties in  
27 interest exist. The true names and capacities of real parties in interest DOES XXI-L, inclusive, are  
28 unknown to petitioners who therefore sue such real parties in interest by fictitious names pursuant to CCP

1 section 474. Petitioners are informed and believe, and based on such information and belief allege, that  
2 the fictitiously named real parties in interest have a direct interest in approval of the Delta Plan.  
3 Petitioners will, with leave of Court if necessary, amend this Verified Petition if and when the true names  
4 and capacities of said Doe real parties in interest have been ascertained.

#### 5 GENERAL ALLEGATIONS

6 15. Petitioners have authorized their attorneys to file this lawsuit on their behalf to vindicate  
7 their substantial beneficial interest in securing respondent's compliance with the law.

8 16. Petitioners have performed any and all conditions precedent to the filing of this Verified  
9 Petition and Complaint and have exhausted any and all available administrative remedies to the extent  
10 required by law.

11 17. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law  
12 within the meaning of CCP section 1086 in that, unless this Court issues its writ of mandate setting aside  
13 respondent's approval of the Delta Plan, and ordering it to comply with the laws whose violation is  
14 alleged herein, the environmental interests of petitioners and the public that are protected by those laws  
15 will be substantially and irreparably harmed. No monetary damages or other legal remedy could  
16 adequately compensate petitioners for the harm to their beneficial interests, and to the environment,  
17 occasioned by respondent's unlawful conduct.

18 18. Petitioners are entitled to declaratory relief under CCP section 1060 because an actual  
19 controversy exists between petitioners and respondents. Petitioners contend that respondent has acted in  
20 violation of applicable laws and must therefore vacate and set aside its approval of the Delta Plan.  
21 Petitioners are informed and believe that the Council disputes this contention. A judicial resolution of  
22 this controversy is therefore necessary and appropriate.

23 19. Petitioners are also entitled to injunctive relief under CCP section 526 because approval of  
24 the Delta Plan threatens irreparable environmental harm. Unless enjoined, respondent will implement the  
25 Delta Plan despite its lack of compliance with applicable laws, causing undue and unnecessary  
26 environmental degradation. Petitioners would thereby suffer irreparable harm due to respondent's failure  
27 to take the required steps to adequately protect the environment. Injunctive relief is thus warranted under  
28 CCP section 525 *et seq.* and PRC section 21168.9 to prevent irreparable harm to the environment.

**FACTUAL BACKGROUND**

20. “[T]he Sacramento-San Joaquin River Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources.” PRC § 29701. The Delta is the largest and most productive estuarine system on the west coast of North and South America, but its future is in peril. It is the State of California’s avowed policy “to recognize, preserve, and protect those resources of the delta for the use and enjoyment of current and future generations.” *Id.*

21. The Delta’s imminent ecologic collapse is well-recognized and indisputable. It has two principal causes. First, an unsustainable proportion of the Delta’s freshwater flows has been diverted for decades by the Central Valley Project (“CVP”) and the State Water Project (“SWP”). Second, for too long, agricultural diverters have discharged run-off contaminated with salt, selenium, and other toxic substances back into the rivers and groundwaters that are tributary to the Delta. This one-two punch of diminished freshwater flows and increased temperature, salinity and herbicides, pesticides, and heavy metals has pushed the Delta to the brink of ecologic collapse.

22. Due to excessive diversions of water for consumptive use, many species of fish endemic to the Delta have already gone extinct, including the Sacramento perch, formerly one of the most abundant fish of the Delta, which disappeared in the 1970s. Just 12 indigenous species remain, and these are in grave danger. Since the SWP and CVP began operation, the Sacramento River winter and spring run Chinook salmon, Central Valley steelhead, North American green sturgeon and Delta smelt have been driven perilously close to extirpation. Each of these species is listed as either endangered or threatened under the federal Endangered Species Act.

23. In addition to harming many fish species in the Delta, the excessive use of Delta water exports to irrigate contaminated soils in the San Joaquin Valley pollutes ground and surface waters that flow into the Delta. Irrigation leaches pollutants from the toxic soils underlying many of the areas irrigated with Delta water. The subsurface drainage and surface run off from these contaminated soils contains pollutants including selenium, arsenic, boron, mercury, uranium, chromium, molybdenum and sodium sulfates. The resulting pollution of the Delta and its San Joaquin Valley tributaries threatens the Delta’s water quality and the fish and wildlife dependent on them.

24. To address the indisputably perilous state of the Delta, the California Legislature enacted

1 the Delta Reform Act, declaring that “[t]he Sacramento-San Joaquin Delta watershed and California’s  
2 water infrastructure are in crisis and *existing Delta policies are not sustainable*.” Water Code § 85001(a),  
3 emphasis added. The Legislature found that “‘the Delta’ . . . is a critically important natural resource for  
4 California and the nation. It serves Californians concurrently as both the hub of the California water  
5 system and the most valuable estuary and wetland ecosystem on the west coast of North and South  
6 America.” Water Code § 85002. “Resolving the crisis requires *fundamental reorganization* of the state’s  
7 management of Delta watershed resources.” Water Code § 85001(a), emphasis added. Therefore, the  
8 Legislature resolved “to provide for the sustainable management of the [Delta] ecosystem, to provide for  
9 a more reliable water supply for the state, to protect and enhance the quality of water supply from the  
10 Delta, and to establish a governance structure that will direct efforts *across state agencies* to develop a  
11 *legally enforceable* Delta Plan.” Water Code § 85001(c), emphasis added.

12 25. The Delta Reform Act was meant to advance the “coequal goals” of restoring the Delta  
13 ecosystem and ensuring water supply reliability. Water Code § 85054. The Legislature found that eight  
14 “objectives” were inherent in those coequal goals:

- 15 (a) *Manage the Delta’s water and environmental resources and the water resources of the*  
16 *state over the long term.*
- 17 (b) *Protect and enhance the unique cultural, recreational, and agricultural values of the*  
18 *California Delta as an evolving place.*
- 19 (c) *Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy*  
20 *estuary and wetland ecosystem.*
- 21 (d) Promote statewide water conservation, water use efficiency, and *sustainable water use.*
- 22 (e) Improve water quality to protect human health and the environment consistent with  
23 *achieving water quality objectives in the Delta.*
- 24 (f) Improve the water conveyance system and expand statewide water storage.
- 25 (g) Reduce risks to people, property, and state interests in the Delta by effective emergency  
26 preparedness, appropriate land uses, and investments in flood protection.
- 27 (h) Establish a new governance structure with the authority, responsibility, accountability,  
28 scientific support, and adequate and secure funding to achieve these objectives.

Water Code § 85020, emphasis added.

26. The Legislature also declared that:

The policy of the State of California is to *reduce reliance on the Delta in meeting*  
*California’s future water supply needs* through a statewide strategy of investing in

1 improved regional supplies, conservation, and water use efficiency. Each region that  
2 depends on water from the Delta watershed shall improve its regional self-reliance for  
3 water through investment in water use efficiency, water recycling, advanced water  
technologies, local and regional water supply projects, and improved regional coordination  
of local and regional water supply efforts.

4 Water Code § 85021, emphasis added.

5 27. Reasonable use and the Public Trust Doctrine are to be the “foundation of state water  
6 management policy.” Water Code § 85023.

7 28. To achieve these environmental protections, the Delta Reform Act tasked the Council with  
8 developing the Delta Plan. After repeated revisions of the Plan in 2011, the Council released the Fifth  
9 Staff Draft Delta Plan in August 2011, and the Draft PEIR (“DPEIR”) in November 2011. Petitioners  
10 submitted extensive comments on both. After the public comment period, the Council issued a  
11 Recirculated Draft PEIR (“RDPEIR”) in November 2012. The Council then certified the Final PEIR  
12 (“PEIR”) and approved the Delta Plan at a public meeting on May 16, 2013. The Council published its  
13 CEQA Notice of Determination on May 17, 2013.

14 29. The PEIR contains the Council’s responses to comments on the DPEIR and RDPEIR, but  
15 does so in a needlessly confusing manner. Some comments refer to the DPEIR text, some to the  
16 RDPEIR, and some to various other stages of the Council’s CEQA process. Some refer to portions of the  
17 text that have changed from one draft to the next, and some to text that has not changed. In order to  
18 understand the PEIR, the reader must first examine the final changes, then scrutinize the recirculated  
19 changes, and finally review the draft version. The Council could have circulated for public review and  
20 comment a final version of the RDPEIR that incorporated the previous changes made in the PEIR. That  
21 simple, obvious correction to this flawed public review process would have rectified the confusion and  
22 misdirection. Because this was not done, the resulting mishmash of fragmented, scattered, overlapping  
23 and cryptic text of the PEIR (and comments thereon) renders it virtually incomprehensible.

24 30. One of the purposes of the Delta Plan is to provide detailed management direction to guide  
25 development of implementing measures such as the subsequent Bay Delta Conservation Plan (“BDCP”).  
26 Contrary to this statutory direction, however, the Delta Plan defers and sidesteps the adoption of specific,  
27 enforceable measures to guide preparation of the BDCP and to protect the Delta ecosystem. The Delta  
28 Plan should have answered the question: how should Delta flows be *improved* to *halt* the Delta’s decline



1 and *restore* the entire ecosystem? Instead, the Council has offered up five confusing volumes that contain  
2 vast but disjointed bits of information, and precious few cogent, concrete and coordinated guidelines.

3 31. The BDCP will ostensibly provide for new Delta conservation and development programs  
4 including water management facilities, habitat restoration activities, and scientific research. It is intended  
5 to both “restore a more naturally functioning Delta ecosystem” and ensure “a reliable freshwater source  
6 from the Delta.” Delta Plan DPEIR at 23-1. The Department of Water Resources (“DWR”) is the lead  
7 agency for the BDCP under CEQA, and the Council is one of a number of responsible agencies. The  
8 federal Bureau of Reclamation and a number of water agencies and districts are also participating in the  
9 development of the BDCP. The BDCP will be incorporated into the Delta Plan as long as it meets certain  
10 criteria, including approval by the California Department of Fish and Game, compliance with CEQA, and  
11 qualification as a Habitat Conservation Plan and a Natural Community Conservation Plan. *See* Water  
12 Code § 85320. The BDCP is still in its review process, with a Draft Environmental Impact Report  
13 (“EIR”) expected to be released in late summer 2013.

14 32. The Delta Plan PEIR claims that the BDCP will “help reverse the Delta’s ecological  
15 decline.” PEIR Volume 4, Binder 1, at 3-16. However, the BDCP proposes construction of a massive  
16 35-mile long “dual-bore” tunnel some 40 feet in diameter that would divert most of the Sacramento  
17 River’s flow underneath the Delta for export. BDCP Revised Adm. Draft (March 2013) § 4.2.1.1.1 and  
18 Figure 4-3. It would divert up to 9,000 cubic feet per second (“cfs”) – about 6.5 million acre-feet per  
19 year, sufficient to flood the entire state of Rhode Island under nearly 7 feet of water – from the  
20 Sacramento River to Clifton Court Forebay for export south. Diverting this staggering quantity of water  
21 threatens to exacerbate, rather than “reverse,” the Delta’s ecologic decline.

22 33. The Delta Plan’s accommodation of this gargantuan diversion scheme flies in the face of  
23 the Legislature’s declared intent through the Delta Reform Act “to *reduce* reliance on the Delta in  
24 meeting California’s future water supply needs” by improving “regional self-reliance.” Water Code §  
25 85021, emphasis added. By sanctioning the BDCP’s expenditure of nearly 25 billion dollars on massive  
26 new conveyance infrastructure, the Delta Plan ensures that water users south of the Delta will not pursue  
27 regional self-reliance, and the Delta will continue to deteriorate as excessive quantities of fresh water are  
28 unsustainably siphoned off.

34. The twin tunnels proposed under the BDCP embraced by the Delta Plan would be extraordinarily cost-inefficient – the only peer reviewed cost-benefit analysis of the project estimated that it would cost \$2.50 for every \$1.00 in benefits. The bulk of the burden would fall upon taxpayers, urban water ratepayers, and the natural environment, while large agribusiness would reap most of the benefits.

**FIRST CAUSE OF ACTION**

**(Violation of CEQA for Inadequate Environmental Review)**

**(Alleged by All Petitioners Against All Respondents)**

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

36. Petitioners bring this First Cause of Action pursuant to PRC sections 21168 and 21168.5, on the grounds that the Council committed a prejudicial abuse of discretion, by failing to proceed in the manner required by law, in approving a deeply flawed Delta Plan based on a legally inadequate PEIR.

37. CEQA requires public agencies to conduct environmental review prior to approving any project that may have a significant impact on the environment. PRC §§ 21002.1, 21061, 21100, 21151; Cal. Code Regs., tit. 14 (CEQA Guidelines or “Guidelines”) § 15004(a). The Council is a “public agency” within the meaning of CEQA. PRC § 21063. The Council’s actions in approving and carrying out the Delta Plan are subject to the requirements of CEQA.

38. The purpose of an EIR is to provide agencies and the public with information about a proposed project's potential environmental effects, ways to minimize those effects, and potential alternatives to the project. PRC § 21061. The EIR must "include a detailed statement" describing, *inter alia*, all of the proposed project's significant effects on the environment, alternatives to the project, and potential mitigation measures. PRC § 21100(b).

39. A program EIR may be prepared for a related “series of actions that can be characterized as one large project.” Guidelines § 15168(a). Program EIRs are useful because they allow the agency to (1) provide “a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action”; (2) ensure full consideration of cumulative impacts; (3) avoid “duplicative” analysis of “basic policy considerations”; and (4) consider “broad policy alternatives and program wide mitigation measures” when the agency still has the greatest “flexibility to deal with basic problems or cumulative impacts.” PRC § 15168(b). Program EIRs must still meet all of the content requirements of

1 CEQA and its Guidelines. Guidelines §§ 15160, 15120-15132.

2 **The Project Description Is Inadequate**

3 40. An EIR must contain a project description including “the project’s technical, economic,  
4 and environmental characteristics.” Guidelines § 15124(c). The “project” for CEQA purposes is “the  
5 whole of an action” potentially causing direct or indirect “physical change in the environment.” *Id.* at §  
6 15378(a). The PEIR states that the “project” here encompasses adoption of the Delta Plan, future actions  
7 by the Council relating to its consistency determinations, “and implementing actions called for by the  
8 Delta Plan’s policies, recommendations, and performance measures.” PEIR Volume 4, Binder 1, at 3-7.  
9 The whole of the “project” necessarily includes all components of the legislatively mandated  
10 “fundamental reorganization of the state’s management of Delta watershed resources” that the Delta Plan  
11 is being proposed to achieve. Water Code § 85001(a). Contrary to CEQA, the PEIR fails to address the  
12 entirety of the project that is being approved, as shown below.

13 41. “[A]n accurate, stable and finite project description is the *sine qua non* of an informative  
14 and legally sufficient EIR,” while a “curtailed, enigmatic or unstable project description” is unacceptable.  
15 *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 197-199 (“*County of Inyo*”); Guidelines  
16 § 15124. A clear and accurate picture of the project is required in order for agencies and the public to  
17 “balance the proposed project’s benefits against its environmental cost, consider appropriate mitigation  
18 measures,” and assess potential alternatives. *City of Santee v. County of San Diego* (1989) 214  
19 Cal.App.3d 1438, 1454.

20 42. The project description for the Delta Plan is precisely the type of “enigmatic” description  
21 that was condemned in *County of Inyo*, 71 Cal.App.3d at 199. The reader must refer to multiple sections  
22 scattered throughout multiple volumes to piece together the entire project description. The 100-plus page  
23 description in the DPEIR, Volume 1, section 2A, gives no concrete information about the key aspects of  
24 the Delta Plan. The “Revised Project Description” in Volume 3, section 2 (of the RDPEIR) adds  
25 additional information but refers repeatedly to the original project description in Volume 1.

26 43. Contrary to CEQA’s core mandate to *inform* the public of the Project’s impacts on the  
27 environment, the actual policies and recommendations that comprise the Plan are buried in an appendix,  
28 which consists of a table more than twenty pages long listing policies and recommendations labeled with

1 acronyms which seem to be defined only in Volume 3. *See* PEIR Volume 5, Binder 2, Appendix A;  
2 RDPEIR Volume 3 at ES-3. Worse, these hidden policies are rife with contradictions and conundrums.  
3 Policies are enforceable, but only with respect to “covered actions,” while recommendations are not  
4 enforceable but “essential.” RDPEIR Volume 3 at 2-2 to 2-3. To determine whether a given project  
5 would be a “covered action,” the reader must refer to other sections of the PEIR or to the Delta Act itself.

6 44. Spreading a project description across multiple volumes and hiding the basic elements of  
7 the proposed action in an appendix is impermissible. *San Joaquin Raptor Rescue Center v. County of*  
8 *Merced* (2007) 149 Cal.App.4th 645, 659 (“decision makers and [the] general public should not be forced  
9 to sift through obscure minutiae or appendices in order to ferret out” fundamental aspects of the project’s  
10 description); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40  
11 Cal.4th 412, 442 (“*Vineyard*”) (“[I]nformation “scattered here and there in EIR appendices,” or a report  
12 “buried in an appendix,” is not a substitute for “a good faith reasoned analysis”. . .”). The PEIR’s  
13 fractured, cryptic and muddled project description frustrates CEQA’s goal of making the agency’s  
14 decisionmaking accessible to the public. *Laurel Heights Improvement Assn. v. Regents of University of*  
15 *California* (1988) 47 Cal.3d 376, 392.

#### 16 **The PEIR’s Discussion of Purpose and Objectives Is Too Vague**

17 45. CEQA requires that the project description provide a “statement of the objectives sought  
18 by the proposed project,” including “the underlying purpose of the project.” Guidelines § 15124(b).  
19 Clear objectives “help the lead agency develop a reasonable range of alternatives to evaluate” and “help  
20 the agency prepare its findings or statement of overriding considerations.” *Id.*

21 46. The PEIR’s statement of purpose and objectives is anything but clear. The reader must  
22 refer to two widely separated volumes of the PEIR to read the entirety of the “project objectives” section.  
23 PEIR Volume 4, Binder 1, at 3-13 (“[t]he project objectives [are] identified in Section 1.1 of the Draft  
24 PEIR (Volume 1) (p. 1-4) and Recirculated Draft PEIR Section 2.19 (p. 2-25)”).

25 47. The PEIR’s “Delta Plan Purpose and Project Objectives” section fails to explain either the  
26 Project’s purpose or its objectives. DPEIR Volume 1 at 1-1 to 1-4. Although that section recites many of  
27 the Delta Reform Act’s mandates, it does not provide any further definition of the key terms and  
28 management implications of those mandates. For example, one of the DPEIR’s cited objectives is to

1 “[m]anage the Delta’s water and environmental resources and the water resources of the state over the  
2 long term.” DPEIR Volume 1 at 1-1. However, this vague “objective” without more detail evades  
3 informed evaluation and therefore proves unhelpful in the evaluation of alternatives that are intended to  
4 achieve the Delta Plan’s goals.

5 **The PEIR’s Discussion of the Plan’s Impacts Is Incomplete**

6 48. “The fundamental purpose of an EIR is ‘to provide public agencies and the public in  
7 general with detailed information about’” a proposed project’s environmental effects. *Vineyard*, 40  
8 Cal.4th at 428. Therefore, CEQA requires that an EIR disclose and analyze all potential significant  
9 environmental impacts of a proposed project. PRC § 21100(b)(1); Guidelines § 15126.2. The agency  
10 must make a “good faith effort at full disclosure” of both short- and long-term direct, reasonably  
11 foreseeable indirect, and cumulative effects of the proposed project. Guidelines §§ 15064(d), 15126.2,  
12 15151.

13 49. The PEIR’s discussion of the Project’s environmental impacts fails to do so. It is far too  
14 vague, generalized and abstract to permit informed public review; it defers too much analysis to later,  
15 project-specific environmental reviews; it fails to fully analyze the effects of the BDCP on each of the  
16 competing beneficial uses of water; it fails to fully discuss the presence and impact of invasive species;  
17 and it ignores potential effects of the Project on all of its source watersheds – including the Trinity River  
18 watershed – and the threatened salmon and other species that depend on them.

19 50. Throughout the PEIR, vagueness and abstraction preclude effective analysis. The PEIR  
20 speaks in such broad terms that it is impossible for the public to discern and analyze the Project’s  
21 environmental effects. For example, when comparing the various alternatives, the RDPEIR’s discussion  
22 of greenhouse gas (“GHG”) emissions is so general that it forecloses an informed choice among them.  
23 As to “GHG impacts” the RDPEIR states:

24 The No Project Alternative, the Proposed Project Alternative, and Alternatives 1A, 1B,  
25 and 3 each would have fewer potential GHG impacts than the Revised Project, for  
26 differing reasons, while Alternative 2 would have a similar level of GHG impacts as the  
27 Revised Project. Alternatives 1A and 1B, which encourage no reductions in exports from  
28 the Delta, would involve fewer GHG emissions from construction than the Revised  
Project, but more GHG emissions from pumping and moving water, particularly over  
mountain ranges in southern California. The Proposed Project Alternative and Alternative  
3 would involve overall less construction and operation of local water projects, similar  
amounts of water movement/pumping, and slightly more construction of levees than the

1 Revised Project, therefore, generating a smaller amount of GHG emissions overall.  
2 Alternative 2 would involve similar GHG emissions from construction and operation of  
3 local water projects as the Revised Project, but fewer GHG emissions from  
4 pumping/moving water.

4 RDPEIR Volume 3 at 25-15.

5 51. The very generality of this purported GHG “analysis” precludes the informed  
6 consideration of alternatives that CEQA requires. “The failure to provide enough information to permit  
7 informed decision-making is fatal. ‘When the informational requirements of CEQA are not complied  
8 with, an agency has failed to proceed in a manner required by law and has therefore abused its  
9 discretion.” *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91  
10 Cal.App.4th 342, 361, quoting *Save Our Peninsula Committee v. Monterey County Board of Supervisors*  
11 (2001) 87 Cal.App.4th 99, 118, additional citations omitted.

12 52. The PEIR impermissibly defers all specific analysis of the environmental impacts of  
13 projects implementing the Plan even though those projects are foreseeable and, indeed, an indispensable  
14 part of the Delta Plan itself. Just because the PEIR purports to tier its environmental analysis “does not  
15 excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental  
16 effects of the project and does not justify deferring such analysis to a later tier EIR.” Guidelines §  
17 15152(b). Therefore, lead agencies must not defer analysis of significant environmental effects if that  
18 analysis can, as here, feasibly be undertaken for the implementing actions in question. *EPIC v.*  
19 *California Dept. Of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 502-03; Guidelines § 15151  
20 (“the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible”).

21 **The Council Failed to Fully Consider all Feasible Alternatives to the Plan and the PEIR’s**  
22 **Mitigations Measures Are Vague, Lack Quantifiable Criteria, and Are Unenforceable**

23 53. CEQA requires an EIR to “include sufficient information about each alternative to allow  
24 meaningful evaluation, analysis, and comparison with the proposed project.” Guidelines § 15126.6(d).  
25 Agencies must prevent “significant, avoidable damage to the environment” through the use of feasible  
26 alternatives or mitigation measures. Guidelines § 15002(a)(3); PRC §§ 21002, 21002.1, 21081. Project  
27 approval should be withheld where such measures or alternatives exist, but are, as here, ignored.  
28 Guidelines § 15021(a)(2). An EIR’s discussion of proposed mitigation measures must be sufficiently

1 specific to enable the public to evaluate and comment upon the adequacy of the alternatives and  
2 mitigation measures. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th  
3 777, 794.

4 54. The mitigation measures and alternatives in the PEIR and Monitoring and Reporting  
5 Program are inadequate because they contain only vague approximations of the significant impacts that  
6 will result from the implementation of the Delta Plan, are themselves vague and so malleable as to be  
7 illusory, do not constitute mitigation or alternatives as defined under CEQA and its implementing  
8 Guidelines, and improperly defer consideration without specific implementing standards. PRC §§  
9 21100(b)(3) and (4); Guidelines §§ 15126(e) and (f), 15126.4, 15126.6, 15370. CEQA requires much  
10 more than the vague and unenforceable recommendations that the PEIR proffers. Guidelines §§ 15144,  
11 15151; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727-728.

12 55. Contrary to CEQA's requirements, the PEIR failed to analyze a reasonable range of  
13 alternatives and mitigation measures to address the Project's myriad significant impacts. The PEIR also  
14 presented only vague descriptions of potential mitigation measures. Because the PEIR fails to accurately  
15 identify and analyze certain impacts such as climate change and increased water exports as significant, it  
16 improperly fails to mitigate those impacts altogether.

17 56. The Delta Reform Act requires the Delta Plan to be a legally enforceable, "long term"  
18 management plan for the Delta. Water Code § 85020(a). Yet the Council failed to adequately consider  
19 the long-term environmental impacts of the planned construction of a Delta freshwater conveyance  
20 facility of the magnitude contemplated in the very BDCP that the Delta Plan purportedly sanctions. The  
21 failure to fully consider alternatives to such a massive diversion facility, or to consider what mitigation  
22 measures might be feasible to reduce or avoid its foreseeable impacts, violates the Council's CEQA duty  
23 to consider a reasonable range of alternatives and mitigation measures to address the Project's significant  
24 impacts.

25 57. Further, the PEIR torpedoed Alternative 2 – the ostensibly environmentally protective  
26 option – by loading it down with environmentally unfriendly options to render it ineffectual and  
27 unpalatable, thus impermissibly shrinking the range of actual alternatives to the one preselected by the  
28 Council. For example, Alternative 2 was coupled with a massive reservoir at Tulare Lake. Seizing on

1 this “poison pill” reservoir as posing unacceptably negative impacts without adequate discussion of its  
2 necessity, the Council then tossed the baby out with the bath water. Further confirming its animus toward  
3 this alternative, the Council neglected to update Alternative 2 with ecosystem restoration data when it  
4 updated other portions of the revised EIR. If the only alternatives the Council has considered are  
5 compromised, as with Alternative 2, the Council has *ipso facto* failed to consider an adequate range of  
6 alternatives.

7 58. The No Project Alternative and the Council’s description of existing conditions do not  
8 adequately describe potentially catastrophic impacts to fish populations if the status quo continues. They  
9 also fail to adequately describe the consequences or likelihood of a failure to meet water quality  
10 standards. The No Project Alternative “must be straightforward and intelligible, assisting the decision  
11 maker and the public in ascertaining the environmental consequences of doing nothing.” *Planning*  
12 *Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911. Like the rest  
13 of the alternatives, the No Project Alternative is tainted to prevent informed decisionmaking.

14 59. The PEIR’s discussion of alternatives and mitigation measures also fails to meet CEQA’s  
15 requirements due to the Council’s overall failure to produce a CEQA document that coherently analyzes  
16 the policies and actions contemplated by the Delta Plan. The PEIR’s vague discussion of project purpose  
17 and objectives, lack of an effective project description, and incomplete impacts analysis makes the  
18 promulgation of effective, concrete mitigation measures and alternatives virtually impossible.

#### 19 **The PEIR Lacks an Adequate Cumulative Impacts Assessment**

20 60. An EIR must discuss cumulative impacts when a “project’s incremental effect is  
21 cumulatively considerable.” Guidelines § 15130(a). A “cumulative impact” refers to “two or more  
22 individual effects which, when considered together, are considerable or which compound or increase  
23 other environmental impacts.” Guidelines § 15355. “Cumulative impacts can result from individually  
24 minor but collectively significant projects taking place over a period of time.” Guidelines § 15355(b).  
25 The cumulative impacts discussion must include either a “list of past, present, and probable future  
26 projects producing related or cumulative impacts,” or “a summary of projections contained in an adopted”  
27 broader plan “that describes or evaluates the conditions contributing to the cumulative effect.”  
28 Guidelines § 15130(b). “The Agency must interpret this requirement in such a way as to ‘afford the



1 fullest possible protection of the environment.” *Friends of the Eel River v. Sonoma County Water*  
2 *Agency* (2003) 108 Cal.App.4th 859, 868-869, quoting *Citizens Assn. for Sensible Development of Bishop*  
3 *Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 168.

4 61. Contrary to these requirements, the PEIR fails to adequately assess the Project’s  
5 cumulative impacts. First, because the PEIR’s analysis of the Delta Plan’s impacts is too vague to be  
6 useful, its similarly vague cumulative impacts analysis is necessarily inadequate. Without fully  
7 describing and analyzing the Plan’s impacts, the PEIR could not adequately identify and analyze its  
8 cumulative impacts. The cumulative impacts assessment is plagued by meaningless generalities such as:  
9 “[i]mplementation of these types of projects and construction and operation of these types of facilities  
10 could result in significant environmental impacts.” RDPEIR Volume 3 at 22-1. Such vague statements  
11 are entirely unhelpful.

12 62. Second, the PEIR entirely fails to identify and discuss the potential impacts of the BDCP,  
13 a series of tunnels that will divert massive amounts of water away from the Sacramento River upstream of  
14 the Delta. The PEIR does not analyze how these withdrawals will affect upstream reservoir operations, or  
15 how regulations related to the reservoirs and tunnels will affect Project operations. In *Friends of the Eel*  
16 *River* (2003) 108 Cal.App.4th 859, 871, the court held that the EIR’s cumulative impacts discussion was  
17 insufficient because it failed to acknowledge that curtailed diversions from the Eel River into the Russian  
18 River could cause the Sonoma County Water Agency to fail to “supply water to its customers in an  
19 environmentally sound way.” Likewise, in *County of Amador v. El Dorado County Water Agency* (1999)  
20 76 Cal.App.4th 931, 953, the court rejected an EIR because it failed to “demonstrate the timing, location  
21 and amount of water releases from the upper watershed lakes and analyze the resulting lake levels”  
22 occasioned by the downstream water project’s proposed diversions. The PEIR’s failure to fully  
23 acknowledge and discuss the likely effects on upstream reservoir operation of the BDCP’s downstream  
24 diversions frustrates the ability of the public to understand the proposed Plan and its impacts, and has led  
25 to an inadequate range of alternatives, as discussed above. These omissions violate CEQA.

#### 26 **The EIR Uses the Wrong Baseline**

27 63. “To decide whether a given project’s environmental effects are likely to be significant, the  
28 agency must use some measure of the environment’s state absent the project, a measure sometimes

1 referred to as the ‘baseline’ for environmental analysis.” *Communities for a Better Environment v. South*  
2 *Coast Unified Air Quality Management District* (2010) 48 Cal.4th 310, 315 (“CBE”). “Normally” this  
3 baseline is the “physical environmental conditions in the vicinity of the project, as they exist at the time  
4 the notice of preparation is published,” Guidelines section 15125(a), because “normally” the  
5 “environmental condition[] in the vicinity of the project” is “the environment’s state absent the project.”  
6 *Id.*; *CBE*, 48 Cal.4th at 315.

7 64. Here, by contrast, the Council is not considering a new facility but is instead reviewing the  
8 *continued* viability of exporting large volumes of water from the Delta that are devastating the  
9 environment. As part of its statutory command to enhance the Delta environment, the Council had a duty  
10 to consider the alternative of reducing the existing high level of Delta water exports to mitigate their  
11 environmental impacts. But instead of seizing an obvious opportunity to reduce environmental harm, the  
12 Council ignored it.

13 65. The Council’s “[f]orfeiture of that opportunity is an action, rather than a perpetuation of  
14 the status quo. Put differently, an agency may not escape its duty by ignoring that duty and then  
15 presenting the result as a *fait accompli* incorporated into an environmental baseline.” *League to Save*  
16 *Lake Tahoe v. Tahoe Regional Planning Agency* (E.D.Cal. 2010) 739 F.Supp.2d 1260, 1276 (affirmed in  
17 part and reversed in part, 469 F.App’x 621 (9th Cir. 2012)). As part of its indisputably broad authority to  
18 reconsider the environmental consequences of Delta exports, the Council should have considered those  
19 consequences afresh. Instead, the Council ignored all of these impacts by finding them to be part of the  
20 CEQA baseline.

21 66. By using a baseline that improperly incorporated the environmental consequences of Delta  
22 diversions into the Project, the Council violated CEQA.

### 23 **The EIR Improperly Segments Environmental Review**

24 67. CEQA requires agencies to prepare EIRs regarding the impacts of “projects” that may  
25 have significant environmental impacts. Guidelines § 15064(a)(1). CEQA defines “project” to mean  
26 “the whole of an action.” Guidelines § 15378(a). “The term ‘project’ refers to the activity which is being  
27 approved and which may be subject to several discretionary approvals by governmental agencies. The  
28 term ‘project’ does not mean each separate governmental approval.” Guidelines § 15378(c).

1 Accordingly, agencies “must consider the whole of an action, not simply its constituent parts, when  
2 determining whether [the action] will have a significant environmental effect (*Citizens Assoc. for Sensible  
3 Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151).” Guidelines § 15003(h).

4 68. CEQA thus intends to ensure “that environmental considerations do not become  
5 submerged by chopping a large project into many little ones – each with a minimal potential impact on  
6 the environment – which cumulatively may have disastrous consequences.” *Bozung v. Local Agency  
7 Formation Com.* (1975) 13 Cal.3d 263, 283-284.

8 69. The PEIR acknowledges, as it must, that the Delta Reform Act gives the Council both “the  
9 authority to dictate in the Delta Plan the conveyance improvements it views as meeting the coequal goals”  
10 and the “authority to recommend to BDCP preferred Delta conveyance options that the BDCP process  
11 evaluates.” DPEIR at 23-3, 23-5. The PEIR recognizes that the BDCP is a component of the Delta  
12 reforms it is considering, and that the BDCP is a reasonably foreseeable future project. Yet neither the  
13 Delta Plan nor its PEIR “include[s] any regulatory policies regarding Delta conveyance.” *Id.* at 23-5.

14 70. The particular conveyance facilities selected during the BDCP process will substantially  
15 affect the impacts that arise from implementation of the Delta Plan. The public has a right to know, for  
16 example, what sorts of environmental restoration measures would be needed if bypass tunnels were to be  
17 selected, the extent to which global warming could affect water deliveries and the environment under  
18 various conveyance methods, which conveyance methods best achieve the Delta Reform Act’s goals, and  
19 how the chosen conveyance method will affect implementation of the Delta Plan. The EIR answers none  
20 of these questions.

21 71. By excluding the BDCP from its environmental review of the inextricably interrelated  
22 Delta Plan, the Council violated CEQA.

### 23 **The Council’s Responses to Comments Are Inadequate**

24 72. CEQA requires that the Council provide detailed responses to comments that raise  
25 significant environmental issues. Guidelines § 15088. The Council’s responses must show a “good faith,  
26 reasoned analysis,” and must be supported by factual information. *Id.*; *Laurel Heights Improvement  
27 Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124.

28 73. If a comment raises significant environmental issues and the agency chooses not to accept

1 its suggestions, the agency must explain why. Guidelines § 15088(c); *Flanders Foundation v. City of*  
2 *Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615. Meaningful agency response to public comment is  
3 fundamental to CEQA's informational purpose. For this reason, a failure to adequately respond to  
4 comments renders an EIR "fatally defective." *People v. County of Kern* (1974) 39 Cal.App.3d 830, 842.

5 74. The Council failed to respond to numerous comments by improperly dismissing them as  
6 "a comment on the project, not on the EIR." For example, and for illustrative purposes only, the  
7 Environmental Water Coalition suggested that the Council implement a mandatory groundwater  
8 monitoring system to accurately ascertain the effects of the Delta Plan on groundwater withdrawals. The  
9 Council did not explain that groundwater monitoring was unnecessary, outside of its authority to  
10 mandate, economically infeasible, or any other permissible explanation. Instead the Council simply  
11 deemed all comments relating to the Delta Plan itself to warrant no response, in violation of CEQA's  
12 informational purpose.

13 75. The Council's failure to respond to public comment violated CEQA.

14 **The Council's Findings and Statement of Overriding Considerations Are Not Supported by**  
15 **Substantial Evidence**

16 76. If a project will have "significant environmental effects," CEQA requires the agency to  
17 make "one or more written findings for each of those significant effects, accompanied by a brief  
18 explanation of the rationale for each finding." Guidelines § 15091(a). There are three "possible  
19 findings":

- 20 (1) Changes or alterations have been required in, or incorporated into, the project which avoid  
21 or substantially lessen the significant environmental effect . . . .
- 22 (2) Such changes or alterations are within the responsibility and jurisdiction of another public  
23 agency and . . . have been adopted . . . or can and should be adopted by such other agency.
- 24 (3) Specific economic, legal, social, technological, or other considerations . . . make infeasible  
the mitigation measures or project alternatives identified in the final EIR.

25 Guidelines §15091(a); PRC § 21081(a). The findings "shall be supported by substantial evidence in the  
26 record." Guidelines § 15091(b). Where, as here, an agency approves a project that has significant  
27 environmental effects that "are not avoided or substantially lessened," the agency must "state in writing  
28 the specific reasons to support its action." Guidelines §§ 15093(b); 15096(h), 15064(a)(2). This

1 “statement of overriding considerations shall be supported by substantial evidence,” Guidelines section  
2 15093(b), and is to be made in addition to the findings required under section 15091. Guidelines §  
3 15091(f).

4 77. Requiring such findings and, when necessary, a statement of overriding considerations,  
5 ensures that the agency carefully considers the proposed action’s environmental effects and makes its  
6 decisionmaking process transparent. The “intended effect is to facilitate orderly analysis and minimize  
7 the likelihood that the agency will randomly leap from evidence to conclusions.” *Topanga Assn. for a*  
8 *Scenic Com. v. County of Los Angeles* (1974) 11 Cal.3d 506, 516-517. Since they lay out the agency’s  
9 rationale, findings also help courts to police agency compliance with CEQA’s required procedures. *Mira*  
10 *Mar Mobile Com. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 496 (noting that “findings must  
11 ‘bridge the analytic gap between the raw evidence and ultimate decision,’ so as to allow a reviewing court  
12 ‘to trace and examine the agency’s mode of analysis’”) (citation omitted).

13 78. In order to make the findings required under CEQA, the PEIR must properly identify and  
14 fully analyze the Delta Plan’s myriad significant environmental impacts. As discussed above, the PEIR  
15 completely fails to do so. The Council’s CEQA findings, which are based on this impacts analysis, are  
16 therefore necessarily defective.

17 79. Likewise, the PEIR fails to consider alternatives such as reduced Delta exports that would  
18 feasibly attain most of the Project’s objectives of “sustainable management” to protect and enhance the  
19 Delta’s ecologic health while providing a “more reliable water supply for the state” to meet consumptive  
20 needs. Where, as here, an agency has failed to determine whether there are feasible alternatives that  
21 would avoid a project’s significant environmental impacts (or reduce them to insignificance), its contrary  
22 findings are “necessarily invalid.” *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th  
23 587, 603; *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368.

24 80. Moreover, the Council’s findings and statement of overriding consideration lack  
25 substantial evidentiary support. This omission violates CEQA. PRC §§ 21081.5; Guidelines §§  
26 15091(b), 15093(b).

27 ////

28 ////



1 causes of that mismanagement. The Plan's failure to acknowledge the causal relationship between  
2 excessive diversions and ecologic disaster skews the Plan away from both the cause of the Delta's most  
3 fundamental problems and the solution to those problems. The Plan has thus betrayed the Legislature's  
4 clear command that the Council acknowledge that "existing Delta policies are not sustainable" and that  
5 "[r]esolving the crisis requires fundamental reorganization of the state's management of Delta watershed  
6 resources." Water Code § 85001(a).

7       86. The Delta Plan fails to adequately provide for both restoration of the Delta ecosystem and  
8 reduction of Delta water exports to restore sustainability to Delta water supplies, the second of five  
9 principal features of the Delta Reform Act. Water Code §§ 85020, 85021, 85023. "The policy of the  
10 State of California is to *reduce reliance on the Delta* in meeting California's future water supply needs  
11 through a statewide strategy of investing in improved regional supplies, conservation, and water use  
12 efficiency." Water Code § 85021, emphasis added. The Delta Plan fails to adequately acknowledge and  
13 implement the Legislature's clear mandate to *reduce* reliance on the Delta's water supplies and *increase*  
14 reliance on surface and ground water supplies elsewhere.

15       87. The Delta Plan is required by the Delta Reform Act to further the coequal goals of  
16 ecosystem restoration and water supply reliability. But the Delta Plan treats the ecosystem restoration  
17 goal not as coequal, but as secondary to and of lesser importance than the goal of ensuring water supply  
18 reliability – particularly for large agricultural contractors south of the Delta. By paving the way for the  
19 BDCP despite its planned massive and ecologically harmful diversions, the Council abdicated its  
20 responsibility to restore and protect the Delta ecosystem.

21       88. The Delta Plan fails to adopt and implement the eight specific policy objectives mandated  
22 by the Legislature in Water Resources Code section 85020, the third of five principal features of the Delta  
23 Reform Act. Those objectives require restoration of the Delta ecosystem, "including its fisheries and  
24 wildlife, as the heart of a healthy estuary and wetland ecosystem," protection of the "unique cultural,  
25 recreational, and agricultural values of the California Delta," and improved "statewide water  
26 conservation, water use efficiency, and sustainable water use" as necessary to "reduce reliance on the  
27 Delta in meeting California's future water supply needs." Water Code §§ 85020(b), (c), (d), 85021.  
28 Rather than developing specific management steps and enforceable standards to achieve the Legislature's

1 enumerated goals, the Delta Plan presents only generalized discussions of these topics, sidestepping its  
2 primary responsibility to translate the Legislature's clear policy objectives into specific and enforceable  
3 management measures and performance standards.

4 89. The Delta Plan fails to include specific implementation measures that will promote  
5 recovery of a healthy Delta ecosystem while providing a reliable water supply, improved water  
6 conservation, and better water use efficiency, as required by Water Code sections 85302 and 85303, the  
7 fourth of five principal features of the Delta Reform Act.

8 90. The Delta Plan fails to utilize the "best available scientific information," include  
9 "quantified or otherwise measurable targets" to achieve its objectives, and provide for continuing  
10 monitoring and data collection to assure that its management measures do in fact achieve ecosystem  
11 restoration, as required by Water Code sections 85211 and 85308, the fifth of five principal features of  
12 the Delta Reform Act.

13 91. By failing to meet any of the five principal requirements of the Delta Reform Act in its  
14 development and approval of the Delta Plan, the Council has violated the Delta Reform Act.

### 15 **THIRD CAUSE OF ACTION**

#### 16 **(Violation of the Public Trust Doctrine)**

#### 17 **(Alleged by All Petitioners Against All Respondents)**

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

19 93. Water Code section 85023 states, "the longstanding constitutional principle of reasonable  
20 use and the Public Trust Doctrine shall be the foundation of state water management policy and are  
21 particularly important and applicable to the Delta." The PEIR recognizes that "compliance with the  
22 public trust doctrine is required by the Delta Reform Act."

23 94. In *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426, the court noted  
24 that the public trust doctrine mandates that "before state courts and agencies approve water diversions  
25 they . . . consider the effect of such diversions upon interests protected by the public trust, and attempt, so  
26 far as feasible, to avoid or minimize any harm to those interests." The *National Audubon Society* Court  
27 went on to explain:  
28



1 Just as the history of this state shows that appropriation may be necessary for efficient use of  
2 water despite unavoidable harm to public trust values, it demonstrates that an appropriative  
3 water rights system administered without consideration of the public trust may cause  
4 unnecessary and unjustified harm to trust interests. As a matter of practical necessity the state  
5 may have to approve appropriations despite foreseeable harm to public trust uses. In so doing,  
6 however, the state must bear in mind its duty as trustee to consider the effect of the taking on  
7 the public trust, and to preserve, so far as consistent with the public interest, the uses protected  
8 by the trust.

9 *Id.*, citations omitted.

10 95. "Public trust easements are traditionally defined in terms of navigation, commerce and  
11 fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and  
12 general recreation purposes the navigable waters of the state, and to use the bottom of the navigable  
13 waters for anchoring, standing, or other purposes." *Marks v. Whitney* (1971) 6 Cal.3d 251, 259. For  
14 nearly 50 years it has been settled law in California that public trust values also "encompass[] . . . the  
15 preservation of those lands in their natural state, so that they may serve as ecological units for scientific  
16 study, as open space, and as environments which provide food and habitat for birds and marine life, and  
17 which favorably affect the scenery and climate of the area."

18 96. Implementation of the Delta Plan will adversely affect numerous public trust resources.  
19 As the PEIR and the Council's CEQA findings explain, the chosen alternative will harm wetlands,  
20 riparian vegetation, special-status species, and recreational activities, among other public trust resources.

21 97. With regard to impacts on public trust resources, Alternative 2 is preferable to the chosen  
22 alternative in every respect. Alternative 2 would reduce diversions and have beneficial effects on fish and  
23 wildlife. Alternative 2's only negative environmental impacts *vis-à-vis* the approved project involve  
24 impacts that do not harm public trust resources. For example, the PEIR states that Alternative 2 could  
25 lead to more farmland conversion than the selected alternative, PEIR Volume 4, Binder 1, at 3-36, but  
26 farming is not a recognized public trust use. The PEIR concedes that Alternative 2 would allow "greater  
27 protection of Public Trust resources" than the Project. DPEIR Volume 1 at 3-97. And, the record  
28 demonstrates that Alternative 2 would feasibly attain most of the objectives of the Delta Reform Act.

98. By rejecting Alternative 2 and approving the Delta Plan despite the fact that Alternative 2  
would preserve public trust resources to a greater extent than the approved Plan, the Council abdicated its  
statutory and constitutional obligation to preserve public trust resources to the maximum extent feasible,

1 based on a fair and fully informed balancing of the impacts of these alternatives on public trust resources.

2 **FOURTH CAUSE OF ACTION**

3 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**

4 **Project Approvals as Contrary to C.C.P. §§ 1085 and 1094.5)**

5 **(Alleged by All Petitioners Against All Respondents)**

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

7 100. The Council proceeded in excess of its jurisdiction and abused its discretion in purporting  
8 to approve the Delta Plan and certify its PEIR because such approvals violate CCP sections 1085 and  
9 1094.5 in the following respects, among others:

10 a. such approvals were not granted in accordance with the procedures required by  
11 law;

12 b. such approvals were not based on the findings required by law; and

13 c. such approvals were not based on, or were contrary to, the evidence in the record  
14 before the Council.

15 101. The Council failed to proceed in the manner required by law in the following respects,  
16 among others:

17 a. the Council violated CEQA as alleged hereinabove;

18 b. the Council violated the Delta Reform Act; and

19 c. the Council violated the Public Trust Doctrine.

20 102. The Council's actions in approving the Delta Plan without complying with the procedures  
21 required by CCP sections 1085 and 1094.5 exceeded the Council's jurisdiction and constitute a  
22 prejudicial abuse of discretion, and therefore are invalid and must be set aside.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, petitioners pray for relief as follows:

25 1. For interlocutory and permanent injunctive relief restraining respondent from taking any  
26 action to carry out the Delta Plan pending, and following, the hearing of this matter;

27 2. For a peremptory writ of mandate directing respondent to set aside and vacate its approval  
28 of the Delta Plan and certification of its EIR;

- 1           3.       For declaratory relief declaring the Delta Plan and its EIR to be unlawful;
- 2           4.       For a peremptory writ of mandate directing respondent to suspend all activity under the
- 3 Delta Plan that could result in any change or alteration in the physical environment until it has taken all
- 4 actions necessary to bring its approval of the Delta Plan and its EIR into compliance with CEQA, the
- 5 Delta Reform Act, and the Public Trust Doctrine;
- 6           5.       For attorneys' fees under Code of Civil Procedure section 1021.5;
- 7           6.       For costs incurred in this action; and
- 8           7.       For such other equitable or legal relief as the Court may deem just and proper.

9 Dated: June 14, 2013

Respectfully submitted,

  
STEPHAN C. VOLKER  
NORTH COAST RIVERS ALLIANCE, PACIFIC COAST  
FEDERATION OF FISHERMEN'S ASSOCIATIONS, SAN  
FRANCISCO CRAB BOAT OWNERS ASSOCIATION, and the  
WINNEMEM WINTU TRIBE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
20  
21  
22  
23  
24  
25  
26  
27  
28

0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
20  
21  
22  
23  
24  
25  
26  
27  
28

STEPHAN C. VOLKER (CSB #63093)  
 DANIEL P. GARRETT-STEINMAN (CSB #269146)  
 MARCUS BENJAMIN EICHENBERG (CSB #270893)  
 LAUREN E. PAPPONE (CSB #284806)  
 LAW OFFICES OF STEPHAN C. VOLKER  
 436 14<sup>th</sup> Street, Suite 1300  
 Oakland, California 94612  
 Tel: 510/496-0600  
 Fax: 510/496-1366

Attorneys for Petitioners/Plaintiffs  
 NORTH COAST RIVERS ALLIANCE, PACIFIC COAST  
 FEDERATION OF FISHERMEN'S ASSOCIATIONS,  
 SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,  
 and WINNEMEM WINTU TRIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NORTH COAST RIVERS ALLIANCE, PACIFIC  
 COAST FEDERATION OF FISHERMEN'S  
 ASSOCIATIONS, SAN FRANCISCO CRAB BOAT  
 OWNERS ASSOCIATION, and the WINNEMEM  
 WINTU TRIBE,

Petitioners/Plaintiffs,

v.

DELTA STEWARDSHIP COUNCIL, and DOES I  
 through XX, inclusive,

Respondents/Defendants,

DOES XXI-L, inclusive

Real Parties in Interest

Case No.

**PETITIONERS' NOTICE OF  
 PREPARATION OF CEQA RECORD OF  
 PROCEEDINGS (Public Resources Code  
 §21167.6(b)(2))**

**FILED BY FACSIMILE**

TO RESPONDENT/DEFENDANT DELTA STEWARDSHIP COUNCIL and to your attorneys of  
 record:

Petitioners and plaintiffs hereby notify you, pursuant to Public Resources Code section  
 21167.6(b)(2), that petitioners will compile and lodge with the Sacramento County Superior Court the  
 CEQA record of proceedings on which you based your adoption of the Delta Plan and all related findings  
 and approvals including certification of the Program Environmental Impact Report ("PEIR")  
 (collectively, "Project").

Petitioners request that you (1) promptly provide petitioners access to your aforesaid record of

1 proceedings so that petitioners may reproduce the same, and (2) subsequently inspect and certify  
2 petitioners' reproduction of your record of proceedings so that petitioners may timely lodge the same with  
3 the Court pursuant to Public Resources Code section 21167.6(b)(2).

4 Dated: June 14, 2013



---

STEPHAN C. VOLKER  
Attorney for Petitioners/Plaintiffs  
NORTH COAST RIVERS ALLIANCE, et al.

STEPHAN C. VOLKER (CSB #63093)  
 DANIEL P. GARRETT-STEINMAN (CSB #269146)  
 MARCUS BENJAMIN EICHENBERG (CSB #270893)  
 LAUREN E. PAPPONE (CSB #284806)  
 LAW OFFICES OF STEPHAN C. VOLKER  
 436 14<sup>th</sup> Street, Suite 1300  
 Oakland, California 94612  
 Tel: 510/496-0600  
 Fax: 510/496-1366

Attorneys for Petitioners/Plaintiffs  
 NORTH COAST RIVERS ALLIANCE, PACIFIC COAST  
 FEDERATION OF FISHERMEN'S ASSOCIATIONS,  
 SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,  
 and WINNEMEM WINTU TRIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NORTH COAST RIVERS ALLIANCE, PACIFIC  
 COAST FEDERATION OF FISHERMEN'S  
 ASSOCIATIONS, SAN FRANCISCO CRAB BOAT  
 OWNERS ASSOCIATION, and the WINNEMEM  
 WINTU TRIBE,

Petitioners/Plaintiffs,

v.

DELTA STEWARDSHIP COUNCIL, and DOES I  
 through XX, inclusive,

Respondents/Defendants,

DOES XXI-L, inclusive

Real Parties in Interest

Case No.


**NOTICE OF RESPONDENT'S DUTY TO  
 PREPARE NOTICE OF SETTLEMENT  
 MEETING PURSUANT TO PUBLIC  
 RESOURCES CODE SECTION 21167.8**

**FILED BY FACSIMILE**

TO RESPONDENT/DEFENDANT DELTA STEWARDSHIP COUNCIL and to your attorneys of  
 record:

PLEASE TAKE NOTICE that you have a duty to file a notice of a settlement meeting not later  
 than 20 days after service of the Verified Petition for Writ of Mandate and Complaint herein, pursuant to  
 Public Resources Code 21167.8.

Dated: June 14, 2013

  
 STEPHAN C. VOLKER  
 Attorney for Petitioners/Plaintiffs  
 NORTH COAST RIVERS ALLIANCE, et al.

1 STEPHAN C. VOLKER (CSB #63093)  
 DANIEL P. GARRETT-STEINMAN (CSB #269146)  
 2 MARCUS BENJAMIN EICHENBERG (CSB #270893)  
 LAUREN E. PAPPONE (CSB #284806)  
 3 LAW OFFICES OF STEPHAN C. VOLKER  
 436 14<sup>th</sup> Street, Suite 1300  
 4 Oakland, California 94612  
 Tel: 510/496-0600  
 5 Fax: 510/496-1366

6 Attorneys for Petitioners/Plaintiffs  
 NORTH COAST RIVERS ALLIANCE, PACIFIC COAST  
 7 FEDERATION OF FISHERMEN'S ASSOCIATIONS,  
 SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,  
 8 and WINNEMEM WINTU TRIBE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SACRAMENTO

11 NORTH COAST RIVERS ALLIANCE, PACIFIC  
 COAST FEDERATION OF FISHERMEN'S  
 12 ASSOCIATIONS, SAN FRANCISCO CRAB BOAT  
 OWNERS ASSOCIATION, and the WINNEMEM  
 13 WINTU TRIBE,

14 Petitioners/Plaintiffs,

15 v.

16 DELTA STEWARDSHIP COUNCIL, and DOES I  
 through XX, inclusive,

17 Respondents/Defendants,

18 DOES XXI-L, inclusive

19 Real Parties in Interest  
 20

Case No.

**PETITIONERS' NOTICE TO  
 CALIFORNIA ATTORNEY GENERAL**

**(C.C.P. § 388; P.R.C. § 21167.7)**

**FILED BY FACSIMILE**

21 TO THE ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA

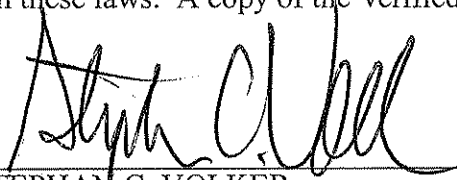
22 PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and Code of Civil  
 23 Procedure section 388, that on June 13, 2013, petitioners and plaintiffs NORTH COAST RIVERS  
 24 ALLIANCE, et al., will file a Verified Petition for Writ of Mandate and Complaint against the DELTA  
 25 STEWARDSHIP COUNCIL, et al., in Sacramento County Superior Court.

26 The Verified Petition alleges that respondents abused their discretion and violated the California  
 27 Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"), the Delta Reform  
 28 Act, Water Code section 85000 et seq., and other laws by their adoption of the Delta Stewardship



1 Council's Delta Plan and certification of its Program Environmental Impact Report and all related  
2 findings and approvals without compliance with these laws. A copy of the Verified Petition and  
3 Complaint is enclosed with this notice.

4 Dated: June 14, 2013

  
5 STEPHAN C. VOLKER  
6 Attorney for Petitioners/Plaintiffs  
7 NORTH COAST RIVERS ALLIANCE, et al.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                                   **PROOF OF SERVICE VIA FACSIMILE AND U.S. POST**

2           I am a citizen of the United States of America; I am over the age of 18 years and not a party to the  
3 within entitled action; my business address is 436 14th Street, Suite 1300, Oakland, CA 94612.

4           On June 14, 2013, I served a true copy of the following document entitled:

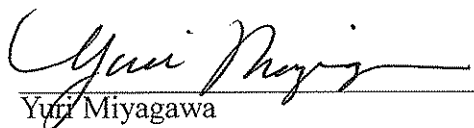
5                                   **PETITIONERS' NOTICE TO CALIFORNIA ATTORNEY GENERAL**

6                                   **(C.C.P. § 388; P.R.C. § 21167.7)**

7 in the above-captioned matter on each of the persons listed below by electronic facsimile transmission to  
8 the facsimile numbers listed below and by placing a true copy of said document in a prepaid envelope in  
9 the United States mail at Oakland, California, addressed as follows:

10 Attorney General of the State of California  
11 California Department of Justice  
12 P.O. Box 944255  
13 Sacramento, CA 94244-2550  
14 Fax: (916) 323-5341

15           I declare under penalty of perjury that the foregoing is true and correct. Executed on June 14,  
16 2013 at Oakland, California.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
Yuri Miyagawa

STEPHAN C. VOLKER (CSB #63093)  
 DANIEL P. GARRETT-STEINMAN (CSB #269146)  
 MARCUS BENJAMIN EICHENBERG (CSB #270893)  
 LAUREN E. PAPPONE (CSB #284806)  
 LAW OFFICES OF STEPHAN C. VOLKER  
 436 14<sup>th</sup> Street, Suite 1300  
 Oakland, California 94612  
 Tel: 510/496-0600  
 Fax: 510/496-1366

Attorneys for Petitioners/Plaintiffs  
 NORTH COAST RIVERS ALLIANCE, PACIFIC COAST  
 FEDERATION OF FISHERMEN'S ASSOCIATIONS,  
 SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,  
 and WINNEMEM WINTU TRIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NORTH COAST RIVERS ALLIANCE, PACIFIC  
 COAST FEDERATION OF FISHERMEN'S  
 ASSOCIATIONS, SAN FRANCISCO CRAB BOAT  
 OWNERS ASSOCIATION, and the WINNEMEM  
 WINTU TRIBE,

Petitioners/Plaintiffs,

v.

DELTA STEWARDSHIP COUNCIL, and DOES I  
 through XX, inclusive,

Respondents/Defendants,

DOES XXI-L, inclusive

Real Parties in Interest

) Case No.

) **NOTICE OF INTENT TO FILE CEQA**  
 ) **ACTION (Public Resources Code §**  
 ) **21167.5)**

) **FILED BY FACSIMILE**

TO RESPONDENT DELTA STEWARDSHIP COUNCIL and to your attorneys of record:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that petitioners intend to file a petition and complaint under the California Environmental Quality Act ("CEQA") against you challenging your adoption of the Bay Delta Plan and related findings and approvals including certification of your Program Environmental Impact Report thereon.

The petition and complaint will seek the following relief: (1) a writ of mandate under CEQA, Public Resources Code section 21000, *et seq.*, the Delta Reform Act, Water Code section 85000, *et seq.*, and Code of Civil Procedure sections 1085 and 1094.5, directing you to set aside such approvals as

1 contrary to CEQA, the Delta Reform Act and the Code of Civil Procedure, (2) declaratory and injunctive  
2 relief pursuant to Code of Civil Procedure sections 1060 and 526; (3) costs of suit; (4) attorney's fees  
3 pursuant to section 1021.5 of the Code of Civil Procedure; and (5) such other and further relief as the  
4 Court deems just and proper.

5 Dated: June 14, 2013

6  
7 

8 STEPHAN C. VOLKER  
9 Attorney for Petitioners/Plaintiffs  
10 NORTH COAST RIVERS ALLIANCE, et al.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

On June 14, 2013, I served true copies of the following documents entitled:

**NOTICE OF INTENT TO FILE CEQA ACTION (Public Resources Code § 21167.5)  
and  
VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND ATTORNEY'S FEES**

in the above-captioned matter on each of the persons listed below by electronic facsimile transmission to the facsimile number listed below and by placing true copies of said documents in a prepaid envelope in the United States mail at Oakland, California, addressed as follows:

Pat Roberts, Clerk of the Council

Sacramento, CA 95814

Fax: (916) 445-7505

pat.rogers@deltacouncil.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 14, 2013 at Oakland, California.

  
Yuri Miyagawa

STEPHAN C. VOLKER (CSB #63093)  
 DANIEL P. GARRETT-STEINMAN (CSB #269146)  
 MARCUS BENJAMIN EICHENBERG (CSB #270893)  
 LAUREN E. PAPPONE (CSB #284806)  
 LAW OFFICES OF STEPHAN C. VOLKER  
 436 14<sup>th</sup> Street, Suite 1300  
 Oakland, California 94612  
 Tel: 510/496-0600  
 Fax: 510/496-1366

Attorneys for Petitioners/Plaintiffs  
 NORTH COAST RIVERS ALLIANCE, PACIFIC COAST  
 FEDERATION OF FISHERMEN'S ASSOCIATIONS,  
 SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION,  
 and WINNEMEM WINTU TRIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

NORTH COAST RIVERS ALLIANCE, PACIFIC  
 COAST FEDERATION OF FISHERMEN'S  
 ASSOCIATIONS, SAN FRANCISCO CRAB BOAT  
 OWNERS ASSOCIATION, and the WINNEMEM  
 WINTU TRIBE,

Petitioners/Plaintiffs,

v.

DELTA STEWARDSHIP COUNCIL, and DOES I  
 through XX, inclusive,

Respondents/Defendants,

DOES XXI-L, inclusive

Real Parties in Interest

Case No.

**PETITIONERS' REQUEST FOR  
 HEARING AND NOTICE OF REQUEST**

**(Cal. Pub. Res. Code § 21167.4)**

**FILED BY FACSIMILE**

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, pursuant to Public Resources Code section 21167.4,  
 petitioners and plaintiffs NORTH COAST RIVERS ALLIANCE, et al., request a hearing on the merits of  
 their Verified Petition for Writ of Mandate and Complaint ("Petition"), which Petition alleges violations  
 of, *inter alia*, the California Environmental Quality Act, Public Resources Code section 21000 et al.  
 ("CEQA"), the Delta Reform Act, Water Code section 85000 et seq., and the Code of Civil Procedure.

This request is being filed with the Court and served on the parties. Following the filing of this  
 Notice of Request and Request for Hearing, any party may apply to the Court to establish a briefing

1 schedule and hearing date for the hearing. *Leavitt v. County of Madera*, 123 Cal.App.4th 1502, 1514-23  
2 (2004); *Ass'n for Sensible Dev. at Northstar v. Placer County*, 122 Cal.App.4th 1289, 1294-95 (2004).  
3 The hearing date, time, and place, and the briefing schedule for the hearing are to be established by the  
4 Court following such application by any party. *Id.*

5 Dated: June 14, 2013

  
6 STEPHAN C. VOLKER  
7 Attorney for Petitioners/Plaintiffs  
8 NORTH COAST RIVERS ALLIANCE, et al.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

DELTA STEWARDSHIP COUNCIL, and DOES I through XX,  
Respondents/Defendants, DOES XXI-L, Real Parties in Interest

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NORTH COAST RIVERS ALLIANCE, et al.  
(see Attachment 1 for complete list)

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Sacramento County Superior Court  
720 Ninth Street, Sacramento, CA 95814-1398

CASE NUMBER:  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Stephan C. Volker, Law Offices of Stephan C. Volker, 436 14th Street, #1300, Oakland, CA 94612

DATE:  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) \_\_\_\_\_ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



## ATTACHMENT 1

NORTH COAST RIVERS ALLIANCE, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION, and the WINNEMEM WINTU TRIBE,

Petitioners/Plaintiffs,

v.

DELTA STEWARDSHIP COUNCIL, and DOES I through XX, inclusive,

Respondents/Defendants,

DOES XXI-L, inclusive,

Real Parties in Interest.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stephan C. Volker (CSB #63093) Law Offices of Stephan C. Volker 436 - 14th Street, Suite 1300 Oakland, CA 94612 TELEPHONE NO.: 510/496-0600 FAX NO.: 510/496-1366 ATTORNEY FOR (Name): North Coast Rivers Alliance, et al., Petitioners/Plaintiffs		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814-1398 BRANCH NAME:			
CASE NAME: North Coast Rivers Alliance, et al., v. Delta Stewardship Council, et al.			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER:	
		JUDGE:	
		DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☐ monetary     b. ☒ nonmonetary; declaratory or injunctive relief     c. ☐ punitive
4. Number of causes of action (specify): Four (4)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 14, 2013  
 Stephan C. Volker

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2