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FEDERATION OF FISHERMEN’S ASSOCIATIONS, and SAN FRANCISCO
8 CRAB BOAT OWNERS ASSOCIATION

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SACRAMENTO

11	NORTH COAST RIVERS ALLIANCE,)	CASE NO.
	WINNEMEM WINTU TRIBE, INSTITUTE FOR)	
12	FISHERIES RESOURCES, PACIFIC COAST)	VERIFIED PETITION FOR WRIT OF
	FEDERATION OF FISHERMEN’S)	MANDATE AND COMPLAINT FOR
13	ASSOCIATIONS, and SAN FRANCISCO)	DECLARATORY AND INJUNCTIVE
	CRAB BOAT OWNERS ASSOCIATION,)	RELIEF AND ATTORNEY’S FEES
14)	
	Petitioners/Plaintiffs,)	CEQA CASE
15)	
	v.)	
16)	
	CALIFORNIA DEPARTMENT OF WATER)	
17	RESOURCES and DOES I-XX, inclusive,)	
)	
18	Respondents/Defendants,)	
19)	
	UNITED STATES BUREAU OF RECLAMATION,)	
20	METROPOLITAN WATER DISTRICT OF)	
	SOUTHERN CALIFORNIA, KERN COUNTY)	
21	WATER AGENCY, and DOES XXI-C, inclusive,)	
)	
22	Real Parties in Interest.)	

24 Petitioners North Coast Rivers Alliance, *et al.*, hereby petition the Court for a writ of mandate
25 against respondent California Department of Water Resources and by this Verified Petition allege as
26 follows:

27 **INTRODUCTION**

28 1. This is a public interest citizen suit to enforce California’s environmental laws and protect

1 the Delta from imminent ecologic collapse. Petitioners bring this action to challenge respondent
2 California Department of Water Resources' ("DWR's") approval of its California WaterFix ("CWF")
3 ("Project") and certification of its Final Environmental Impact Report ("EIR") thereon on or about July
4 21, 2017. CWF proposes to divert up to 9,000 cubic feet per second ("cfs") – equivalent to 15 million
5 acre feet ("MAF") of water annually – from the Sacramento River upstream of the Delta and export it to
6 real parties in interest Kern County Water Agency ("KCWA") and Metropolitan Water District of
7 Southern California ("MWD") and other consumptive agricultural and urban water users in Central and
8 Southern California, depriving the Delta of fresh water flows vitally needed to restore and sustain its
9 imperiled fish species including salmon, steelhead and sturgeon, harming the millions of Californians
10 who depend on the Delta for their subsistence, livelihood, recreation and quality of life. In taking these
11 actions, DWR violated the California Environmental Quality Act ("CEQA"), Public Resources Code
12 ("P.R.C.") section 21000 *et seq.*, the Sacramento-San Joaquin Delta Reform Act of 2009 ("Delta Reform
13 Act"), Water Code section 85000 *et seq.*, the Public Trust Doctrine, and Code of Civil Procedure
14 ("C.C.P.") sections 1085 *et seq.*

15 2. CEQA requires DWR to accurately describe the Project, fully examine the impacts of
16 increasing Delta exports, carefully consider alternatives and mitigation measures that would avoid and
17 reduce those impacts, and respond meaningfully to public comments on these matters. Contrary to
18 CEQA, DWR's Final EIR ("FEIR") fails on each of these counts. Although it purports to describe the
19 Project and analyze its environmental impacts, as required by CEQA, its excessive generality and
20 segmentation precludes meaningful public review, it fails to adequately consider feasible alternatives and
21 mitigation measures that would prevent further ecologic collapse, and it fails to respond adequately to
22 public comments. Because the FEIR falls far short of achieving CEQA's twin mandates of identifying
23 and avoiding significant environmental harm, it violates CEQA.

24 3. The Delta Reform Act requires DWR to submit a finding to the Delta Stewardship Council
25 ("DSC") that the Project is consistent with a valid Delta Plan. Water Code §§ 85225-85225.25. Because
26 the DSC has failed to adopt a valid Delta Plan, DWR cannot currently submit the required finding of
27 consistency. By approving the Project without waiting until it could make the required finding of
28 consistency with the Delta Plan, DWR violated the Delta Reform Act. Water Code §§ 85225-85225.25.

1 fishing for both subsistence and cultural purposes, and maintains a deep cultural, spiritual and
2 recreational interest in the continued viability of California’s salmon runs that pass through the Delta.
3 The Project assumes and depends upon continued inundation of the McCloud River by Shasta Reservoir
4 and blocking of McCloud River salmon runs by Shasta Dam. DWR has ignored the Winnemem Wintu’s
5 vital historic and cultural interest in restoration of the historic salmon runs that the Project will preclude.
6 The Winnemem Wintu Tribe is a strong proponent of Delta restoration, including construction of
7 fishways around Shasta Dam to restore historic McCloud River salmon runs through the Delta. The
8 Winnemem Wintu Tribe will be harmed by the reduction in fresh water flows in the Delta, degradation of
9 its water quality, and loss of its fish and wildlife species that implementation of the Project would cause.

10 10. Petitioner INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a non-profit, tax-
11 exempt organization that works to protect and restore salmon and other fish populations and the human
12 economies that depend on them. IFR maintains its principal place of business in San Francisco,
13 California. IFR both funds and manages many of fish habitat protection programs and initiatives. In that
14 capacity, IFR advocates for reforms to protect fish health and habitat throughout the West Coast of the
15 United States and has successfully advocated for dam removals, improved pesticide controls, better
16 forestry stream protection standards, and enhanced marine and watershed conservation regulations
17 throughout the West Coast. IFR has worked tirelessly for years to restore and enhance the Delta and its
18 beleaguered fish and wildlife. IFR and its members will be directly and indirectly injured by the Project’s
19 failure to adequately protect and restore the imperiled fisheries of the Delta.

20 11. Petitioner PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS
21 (“Pacific Coast Fishermen”) is a nonprofit membership organization incorporated in 1976 with
22 headquarters located in San Francisco, California. Pacific Coast Fishermen is composed of more than 14
23 separate commercial fishing and vessel owners’ associations situated along the West Coast of the United
24 States. By virtue of its combined membership of approximately 750 fishermen and women, the Pacific
25 Coast Fishermen is the single largest commercial fishing organization on the West Coast. Pacific Coast
26 Fishermen represents the majority of California’s organized commercial salmon fishermen and has been
27 an active advocate for the protection of Pacific salmon and their spawning, rearing and migratory habitat
28 for more than 30 years. Pacific Coast Fishermen and its members would be harmed by the proposed

1 Project because it would threaten their commercial fishing livelihoods, which depend on sustainable
2 management of the salmonid fisheries resources of the Delta its and connected ecosystems.

3 12. Petitioner SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION (“San Francisco
4 Fishermen”) is a century-old association of owners and operators of small, family owned fishing boats
5 that catch Dungeness crab, wild California King salmon, Pacific herring, and other species that live in and
6 depend upon the cold waters of the Pacific Ocean, and San Francisco Bay-Delta and the Sacramento and
7 San Joaquin Rivers and their tributaries. San Francisco Fishermen is also actively involved in community
8 education and advocacy concerning fisheries resources legislation to ensure that the rich heritage of
9 commercial fishing in the Bay Area will survive for future generations. San Francisco Fishermen and its
10 members will be harmed by the proposed Project because it would threaten their continued historic use
11 and enjoyment of the fisheries resources of the Delta and its connected ecosystems.

12 13. Respondent CALIFORNIA DEPARTMENT OF WATER RESOURCES (“DWR”) is a
13 California public agency established by the Legislature and charged with management of the State Water
14 Project and other water management tasks. Its approval of the Project on July 21, 2017 is subject to and
15 violated the requirements of CEQA, the Delta Reform Act, and the Public Trust Doctrine. DWR is the
16 lead agency under CEQA for environmental review of the Project.

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

24 15. Real party in interest UNITED STATES BUREAU OF RECLAMATION (“Bureau of
25 Reclamation”) is a federal agency within the United States Department of the Interior. It manages
26 federally funded, built and operated water projects in California including Shasta Dam, Folsom Dam,
27 Friant Dam, San Luis Reservoir, the Delta Mendota Canal and the Tracy (Jones) Pumping Plant in the
28 South Delta. Each of these facilities would be managed in coordination with DWR’s proposed operation

1 contaminated with salt, selenium, and other toxic substances into groundwater and the rivers that are
2 tributary to the Delta. This one-two punch of diminished freshwater flows and increased temperature,
3 salinity, herbicides, pesticides, and heavy metals has pushed the Delta to the brink of ecologic collapse.

4 26. Due to excessive diversions of water for consumptive use, many species of fish endemic to
5 the Delta have already gone extinct, including the Sacramento perch, formerly one of the most abundant
6 fishes of the Delta, which disappeared in the 1970s. Just 12 indigenous species remain, and these are in
7 grave danger. Since the SWP and CVP began operation, the Sacramento River winter and spring run
8 Chinook salmon, Central Valley steelhead, North American green sturgeon and Delta smelt have been
9 driven perilously close to extirpation.

10 27. Winter run Chinook salmon were declared threatened under the federal Endangered
11 Species Act (“ESA”) in 1990 (55 Fed.Reg. 46515), and then due to continuing population declines,
12 declared endangered in 2005 (70 Fed.Reg. 37160). Their critical habitat in the Sacramento River and its
13 tributaries was designated in 1993. 58 Fed.Reg. 33212. Spring run Chinook salmon were declared
14 threatened, and their critical habitat designated under the ESA in 2005. 70 Fed.Reg. 37160, 52488.
15 Central Valley steelhead were declared threatened in 2000 (65 Fed.Reg. 52084) and their critical habitat
16 was designated in 2005 (70 Fed.Reg. 52488). The Southern DPS of North American green sturgeon was
17 declared threatened in 2006 (71 Fed.Reg. 17757) and its critical habitat was designated in 2008 (73
18 Fed.Reg. 2084). Delta smelt were declared endangered in 1993 (58 Fed.Reg. 12854) and their critical
19 habitat was designated in 1994 (59 Fed.Reg. 65256).

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

27 29. To address the indisputably perilous state of the Delta, in 2009 the California Legislature
28 enacted the Delta Reform Act, declaring that “[t]he Sacramento-San Joaquin Delta watershed and

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

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

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

28 Water Code § 85020, emphasis added.

31. 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
improved regional supplies, conservation, and water use efficiency. Each region that

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

5 Water Code § 85021, emphasis added.

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

8 33. To achieve these environmental protections, the Delta Reform Act tasked the DSC with
9 developing the Delta Plan. One of the purposes of the Delta Plan is to provide detailed management
10 direction to guide development of implementing measures such as the subsequent Bay Delta
11 Conservation Plan (“BDCP”). Contrary to this statutory direction, however, the Delta Plan defers and
12 sidesteps the adoption of specific, enforceable measures to guide preparation of the BDCP (and its
13 successor, the Project) and to protect the Delta ecosystem. The Delta Plan should have answered the
14 question: how should Delta flows be *improved* to *halt* the Delta’s decline and *restore* the entire
15 ecosystem? Instead, the DSC adopted a Delta Plan so deficient that by Judgment entered October 21,
16 2016 the Sacramento Superior Court set the Delta Plan aside as invalid in a lawsuit filed by petitioners.
17 *North Coast Rivers Alliance, et al. v. Delta Stewardship Council, et al.*, Sacramento Superior Court Case
18 No. 34-2013-80001534 (Coordinated Proceeding JCCP No. 4758), Judgment filed October 21, 2016.

19 34. In 2011 DWR proposed the precursor to the Project, a proposal it dubbed the “Bay Delta
20 Conservation Plan,” or “BDCP.” The BDCP provided for new Delta conservation and development
21 programs including water management facilities, habitat restoration activities, and scientific research
22 ostensibly intended to both “restore a more naturally functioning Delta ecosystem” and ensure “a reliable
23 freshwater source from the Delta.” Draft Programmatic Environmental Impact Report (“Delta Plan
24 DPEIR”) at 23-1. DWR was the lead agency for the BDCP under CEQA and the author of the DPEIR.
25 The BDCP was to be incorporated into the Delta Plan as long as it met certain criteria, including approval
26 by the California Department of Fish and Game (now, the Department of Fish and Wildlife), compliance
27 with CEQA, qualification as a federal Habitat Conservation Plan, and certification of a state Natural
28 Community Conservation Plan. Water Code § 85320.

35. However, it soon became evident that the BDCP could not satisfy the ecological-

1 restoration requirements of either a Habitat Conservation Plan or a Natural Community Conservation
2 Plan. Contrary to the wildlife protections required for such plans, the BDCP proposed construction of a
3 massive 35-mile long “dual-bore” tunnel some 40 feet in diameter that would divert most of the
4 Sacramento River’s flow underneath the Delta for export. BDCP Revised Adm. Draft (March 2013) §
5 4.2.1.1.1 and Figure 4-3. It would divert from the Sacramento River for export south up to 9,000 cubic
6 feet per second (“cfs”) and deliver a projected 6.5 million acre-feet per year, a quantity sufficient to flood
7 the entire state of Rhode Island under nearly 7 feet of water. Diverting this staggering quantity of water
8 from the Sacramento River upstream of the Delta would exacerbate, rather than “reverse,” the Delta’s
9 ecologic decline.

10 36. And, the BDCP’s gargantuan diversion scheme defied the Legislature’s declared intent
11 through the Delta Reform Act “to *reduce* reliance on the Delta in meeting California’s future water
12 supply needs” by improving “regional self-reliance.” Water Code § 85021, emphasis added. The
13 BDCP’s proposed expenditure of nearly 25 billion dollars on massive new conveyance infrastructure to
14 increase Delta water deliveries to water users south of the Delta ensured that they would not pursue
15 regional self-reliance, and that the Delta would suffer a source decline in fresh water flows as they are
16 unsustainably siphoned off.

17 37. Additionally, the BDCP’s twin tunnels would be extraordinarily cost-inefficient – the only
18 peer reviewed cost-benefit analysis of the BDCP estimated that it would cost \$2.50 for every \$1.00 in
19 benefits. The bulk of the burden would fall upon taxpayers, urban water ratepayers, and the natural
20 environment, while large agribusiness would reap most of the benefits.

21 38. By letter dated July 29, 2014, petitioners submitted extensive comments on DWR’s
22 December 2013 Draft Bay-Delta Conservation Plan (“Draft BDCP”) and joint Draft Environmental
23 Impact Report and Environmental Impact Statement (“DEIR/DEIS”) thereon. Petitioners demonstrated
24 that the Draft BDCP did not qualify as a Habitat Conservation Plan under the federal Endangered Species
25 Act (“ESA”), 16 U.S.C. section 1531 et seq., nor as a draft Natural Community Conservation Plan under
26 the California Natural Community Conservation Planning Act, Fish & Game Code section 2800 et seq.
27 *Id.* at 2. To the contrary, as petitioners explained, the Draft BDCP “would likely worsen rather than
28 improve the Delta ecosystem and further imperil numerous fish species.” *Id.* Petitioners pointed out that

1 As a result of [the Draft BDCP's] new intake and conveyance facilities . . . , water that
2 currently flows through the Sacramento River and sloughs to and through the Delta would
3 be diverted, further reducing fresh water flows through the sloughs and Delta. These
4 diversions would also likely necessitate changes in reservoir management in Northern
5 California, including on the Trinity, Shasta, Folsom, and Oroville Reservoirs, and as a
6 result reduce flows in the Trinity, Sacramento, American, and Feather Rivers. With less
7 water in the rivers and more water in the pipes of water exporters, the fish and the Delta
8 ecosystem will suffer, while the wasteful and polluting practices of many of those who use
9 the exported Delta water will be allowed to continue, if not expand.”

10 *Id.* at 2-3.

11 39. Despite its best efforts to market the BDCP as a “conservation plan” notwithstanding its
12 undeniable purpose of exporting more, rather than less, fresh water from the Sacramento River, thereby
13 dewatering the Delta and further imperiling its fish and wildlife, in early 2015 DWR finally tacitly
14 conceded that its proposal had precious little to do with conservation and everything to do with
15 maximizing the export of fresh water flows from the Delta. Consequently, DWR was impelled to jettison
16 the “BDCP” rubric, tacitly acknowledging that the dramatic increase in water exports it was proposing
17 could not possibly qualify as either a Habitat Conservation Plan or a Natural Community Conservation
18 Plan.

19 40. Undaunted by its inability to sell its proposal as a means of conserving rather than further
20 destabilizing the Delta’s collapsing ecosystem, DWR rechristened its proposal as the “California
21 WaterFix.” Changing its name, however, did not in any way diminish its severe adverse environmental
22 impacts. For that reason, by comment letter dated October 30, 2015, petitioners again commented that
23 the California WaterFix (*née* Bay-Delta Conservation Plan) and its Partially Recirculated Draft
24 Environmental Impact Report/Supplemental Draft Environmental Impact Statement (“RDEIR/SDEIS”),
25 like their predecessors, still proposed to reduce rather than restore essential fresh water flows, contrary to
26 governing law including CEQA, the Delta Reform Act and the Public Trust Doctrine, and that DWR
27 failed to address the environmental impacts of this huge reduction in flow, in violation of CEQA. In
28 particular, petitioners pointed out that the RDEIR/SDEIS failed to provide an adequate project description
in violation of both CEQA and the National Environmental Policy Act, 42 U.S.C. section 4321, et seq.
 (“NEPA”) (*id.* at 4-6), failed to consider a reasonable range of alternatives (*id.* at 6), and failed to provide
 an adequate analysis of the BDCP’s environmental impacts (*id.* at 7-13), and that this Project posed
 irreconcilable conflicts with the requirements of the ESA (*id.* at 13-14).

1 41. DWR largely ignored petitioners’ comments in its FEIR. Therefore by letter dated January
2 30, 2017, petitioners once again pointed out that the Project, despite its market strategy-induced name
3 change, remained “a boondoggle that will destroy a unique environmental resource – the Sacramento-San
4 Joaquin River Delta – upon which all Californians depend.” *Id.* at 1.

5 42. DWR’s Project continues to pose unacceptable harm to the Delta and its fish and wildlife.
6 Despite its repackaging, the Project and its CEQA reviews still violate CEQA, the Delta Reform Act, and
7 the Public Trust Doctrine, in the numerous respects detailed below.

8 **FIRST CAUSE OF ACTION**

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

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

11 43. The paragraphs set forth above and below are realleged and incorporated herein by
12 reference.

13 44. Petitioners bring this First Cause of Action pursuant to P.R.C. sections 21168 and
14 21168.5, on the grounds that DWR committed a prejudicial abuse of discretion, by failing to proceed in
15 the manner required by law, in approving a deeply flawed Delta Plan based on a legally inadequate PEIR.

16 45. CEQA requires public agencies to conduct environmental review prior to approving any
17 project that may have a significant impact on the environment. P.R.C. §§ 21002.1, 21061, 21100, 21151;
18 14 C.C.R. § 15000 et seq. (CEQA Guidelines or “Guidelines”) at § 15004(a). DWR is a “public agency”
19 within the meaning of CEQA. P.R.C. § 21063. DWR’s actions in approving and carrying out the Project
20 are subject to the requirements of CEQA.

21 46. The purpose of an EIR is to provide agencies and the public with information about a
22 proposed project’s potential environmental effects, ways to minimize those effects, and potential
23 alternatives to the project. P.R.C. § 21061. The EIR must “include a detailed statement” describing,
24 *inter alia*, all of the proposed project’s significant effects on the environment, alternatives to the project,
25 and potential mitigation measures. P.R.C. § 21100(b).

26 **The Project Description Is Inadequate**

27 47. An EIR must contain a project description including “the project’s technical, economic,
28 and environmental characteristics.” Guidelines § 15124(c). The “project” for CEQA purposes is “the

1 whole of an action” potentially causing direct or indirect “physical change in the environment.” *Id.* at §
2 15378(a). “[A]n accurate, stable and finite project description is the *sine qua non* of an informative and
3 legally sufficient EIR,” while a “curtailed, enigmatic or unstable project description” is unacceptable.
4 *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 197-199 (“*County of Inyo*”); Guidelines
5 § 15124. A clear and accurate picture of the project is required in order for agencies and the public to
6 “balance the proposed project’s benefits against its environmental cost, consider appropriate mitigation
7 measures,” and assess potential alternatives. *City of Santee v. County of San Diego* (1989) 214
8 Cal.App.3d 1438, 1454.

9 48. The project description for the Project is precisely the type of “enigmatic” description that
10 was condemned in *County of Inyo*, 71 Cal.App.3d at 199.

11 49. Rather than “accurate, stable and finite,” the FEIR’s project description remains so
12 “distorted” that it precludes a full and accurate analysis of the project’s environmental impacts and
13 identification of a range of reasonable alternatives. Indeed, the FEIR does not even identify – let alone
14 describe and analyze – any specific “proposed project.” *E.g.*, FEIR 3-1 to 3-3. It considers numerous
15 alternatives, including new Alternatives 4A, 2D, and 5A, but does not describe a proposed action against
16 which it can compare alternatives and the effectiveness of mitigation measures. Consequently, it fails to
17 provide the project description and comparative analysis of alternatives required under CEQA. Public
18 Resources Code §§ 21061, 21100(b); CEQA Guidelines §§ 15124, 15126, 15126.6, 15362, 15378;
19 *County of Inyo*, 71 Cal.App.3d at 193.

20 50. Because the FEIR never identifies a proposed project, DWR has fundamentally misapplied
21 CEQA. Public Resources Code section 21100(b) *requires* that the FEIR “include a detailed statement
22 setting forth . . . : (1) All significant effects on the environment of the *proposed project* . . . [and] (4)
23 *Alternatives to the proposed project.*” Public Resources Code § 21100(b) (emphasis added); *see also*
24 CEQA Guidelines §§ 15126, 15126.6.

25 51. Without an identified proposed action, the FEIR cannot adequately analyze the significant
26 impacts of, or consider alternatives to, that project. “[T]he range of alternatives that an EIR must study in
27 detail *is defined in relation to* the adverse environmental impacts *of the proposed project.*” *In re Bay*
28 *Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143,

1 1167. The FEIR made it impossible to define alternatives in relation to the proposed project since there is
2 none.

3 52. This omission is especially egregious given CEQA’s demand that proposed projects be
4 analyzed in greater detail than potential alternatives, and that the alternatives are intended to lessen the
5 significant impacts of the proposed project. CEQA Guidelines §§ 15064, 15124, 15126, 15126.2,
6 15126.4, 15126.6. The FEIR’s analysis here is circular, making the proposed project and the alternatives
7 one in the same and precluding informed decisionmaking.

8 53. The FEIR’s failure to identify and describe the proposed Project is a fatal flaw that
9 undermines the entirety of its discussion and analysis. Without a proposed project, the FEIR cannot
10 identify the significant impacts of that project nor alternatives that would reduce those impacts.

11 54. Contrary to this command, the FEIR still includes project objectives that are so
12 unreasonably narrow that they preclude any consideration of a reduced delivery alternative as described
13 below. As directed by the CEQA Guidelines, the project description “shall contain” a “statement of
14 objectives sought by the proposed project[, which] will help the Lead Agency develop a reasonable range
15 of alternatives to evaluate in the EIR The statement of objectives should include the *underlying*
16 *purpose* of the project.” Guidelines § 15124(b) (emphasis added). Consequently, it precludes any
17 consideration of a reduced delivery alternative, and thereby undermines the basic purpose of CEQA:
18 comparative analysis of a proposed action with less impactful alternatives.

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

23 **The FEIR’s Analysis Is Improperly Segmented**

24 56. 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), *see*
4 *also* Guidelines § 15378(a), (c).

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

9 58. Here, instead of studying all of their interdependent actions together, DWR – with the
10 Bureau of Reclamation – improperly separated their analysis of the Project from Reclamation’s
11 incorporation of reasonable and prudent alternatives (“RPAs”) into its coordinated Long Term Operation
12 of the CVP and SWP (“LTO EIS”). The LTO EIS substantially overlapped with the FEIR/FDEIS in
13 geographic scope, purpose, and objectives. *Compare* FEIR 1ES 1.1.1.1¹ *with* LTO EIS 2-1 to 2-2. The
14 RPAs addressed in the LTO EIS are the specific parameters that the National Marine Fisheries Service
15 (“NMFS”) and the U.S. Fish and Wildlife Service (“USFWS”) have set to prevent the extinction of
16 sensitive species. Instead of addressing these topics in a unified manner, however, DWR and the Bureau
17 of Reclamation improperly separated the LTO EIS into the latter’s separate project.

18 59. Further, the FEIR’ Alternatives 4A, 2D and 5A likewise improperly segment
19 environmental review because they remove substantial habitat restoration elements, the so-called
20 EcoRestore, from the Project. *See, e.g.*, FEIR ES-22. This segmentation violates CEQA’s demand for
21 unified and comprehensive environmental review:
22

23 ¹ The first revised project objective is to:
24 Address adverse effects to state and federally listed species related to:
25 • The operation of existing SWP Delta facilities and construction and operation of
26 facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the
27 existing SWP and CVP pumping plants located in the southern Delta;
28 • The implementation of actions to improve SWP and/or CVP conveyance that have the
potential to result in take of species that are listed under the [Endangered Species Act] and
California Endangered Species Act]
FEIR 1.1.1.1.

1 Theoretical independence is not a good reason for segmenting the environmental analysis
2 of the two matters. Doing so runs the risk that some environmental impacts produced by
3 the way the two matters combine or interact might not be analyzed in the separate
4 environmental reviews. Furthermore, if the two matters are analyzed in sequence . . . and
5 the combined or interactive environmental effects are not fully recognized until the review
of the second matter, the opportunity to implement effective mitigation measures as part of
the first matter may be lost. This could result in mitigation measures being adopted in the
second matter that are less effective than what would have been adopted if the matters had
been analyzed as a single project.

6 *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214,
7 1230. While the lead agencies indicate that the EcoRestore elements will be implemented separately and
8 subject to separate environmental review, this segmented review subverts CEQA’s purposes.

9 **DWR Failed to Fully Consider all Feasible Alternatives**

10 60. Under CEQA, an EIR must focus on alternatives that would lessen significant effects,
11 even if they “would impede to some degree the attainment of the project objectives, or be more costly.”
12 Guidelines § 15126.6(b).

13 61. CEQA requires an EIR to “include sufficient information about each alternative to allow
14 meaningful evaluation, analysis, and comparison with the proposed project.” Guidelines § 15126.6(d).
15 Agencies must prevent “significant, avoidable damage to the environment” through the use of feasible
16 alternatives or mitigation measures. Guidelines § 15002(a)(3); P.R.C. §§ 21002, 21002.1, 21081. Project
17 approval should be withheld where such measures or alternatives exist, but are, as here, ignored.
18 Guidelines § 15021(a)(2).

19 62. The FEIR fails to study a reasonable range of alternatives, including an alternative that
20 significantly reduces deliveries. Despite adding Alternatives 4A, 2D and 5A, none of these so-called sub-
21 Alternatives alter the conveyance quantities contemplated in the deficient DEIR/DEIS. *See* FEIR ES-22.

22 63. In addition to the above described deficiencies, the FEIR’s discussion of the Alternatives
23 other than Alternative 4A – the preferred alternative – is likewise fatally flawed because there is no
24 project description against which they can be compared. Moreover, all the Alternatives rely on similar
25 speculative assumptions regarding the long-term impacts of water diversions on biological resources,
26 water resources and agriculture. The FEIR’s confusing and incomplete presentation of information
27 precludes thorough analysis as required by CEQA.

28 **The FEIR’s Discussion of the Plan’s Impacts Is Incomplete**

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

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

14 66. Throughout the FEIR, vagueness and abstraction preclude effective analysis. The FEIR
15 speaks in such broad terms that it is impossible for the public to discern and analyze the Project’s
16 environmental effects. The very generality of this purported “analysis” precludes the informed
17 consideration of alternatives that CEQA requires. “The failure to provide enough information to permit
18 informed decision-making is fatal. ‘When the informational requirements of CEQA are not complied
19 with, an agency has failed to proceed in a manner required by law and has therefore abused its
20 discretion.’” *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91
21 Cal.App.4th 342, 361, quoting *Save Our Peninsula Committee v. Monterey County Board of Supervisors*
22 (2001) 87 Cal.App.4th 99, 118, additional citations omitted.

23 67. The FEIR impermissibly defers all specific analysis of the environmental impacts of
24 implementing the Project even though those implementation measures are foreseeable and, indeed, an
25 indispensable part of the Project itself. Just because the FEIR purports to tier its environmental analysis
26 “does not excuse the lead agency from adequately analyzing reasonably foreseeable significant
27 environmental effects of the project and does not justify deferring such analysis to a later tier EIR.”
28 Guidelines § 15152(b). Therefore, lead agencies must not defer analysis of significant environmental

1 effects if that analysis can, as here, feasibly be undertaken for the implementing actions in question.
2 *EPIC v. California Dept. Of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 502-03; Guidelines §
3 15151 (“the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible”).

4 The FEIR’s Analysis of Alternative 4 Is Inadequate

5 **1. Water**

6 68. DWR’s Alternative 4A – Proposed Project – will increase the amount of water delivered
7 to CVP and SWP users south of the Delta. FEIR 11-91 (Long-term, average and wet water years will
8 have “increased Delta exports as compared to Existing Conditions”), 5-174 (“average annual total south
9 of Delta SWP deliveries as compared to [the] No Action Alternative (ELT), would increase (by about
10 5%)”). This increase in deliveries will reduce the amount of water flowing through the Delta, as the
11 water will be diverted into Alternative 4A’s three intakes, conveyed past the Delta, and presented to the
12 SWP and CVP intake pumps at a rate of 9,000 cfs.

13 69. Instead of clearly presenting this data, the FEIR concludes that “Delta outflow under
14 Alternative 4A would *likely* decrease in winter and summer months, *or remain similar or increase in other*
15 *months*, compared to the conditions without the project. FEIR 5-168 (emphasis added). This vague and
16 equivocal statement provides little useful information about the consequences of Project approval.

17 70. In a similarly obfuscatory fashion, the FEIR’s discussion of water transfer impacts states
18 both that “Alternative 4A would *decrease* water transfer demand compared to existing conditions” and
19 that “Alternative 4A would *increase* water transfer demand compared to existing conditions.” FEIR 5-
20 177 (in discussion of “NEPA Effects” and “CEQA Conclusion,” respectively) (emphasis added). It also
21 claims that Alternative 4A would both “*decrease* conveyance capacity” and “*increase* conveyance
22 capacity.” *Id.* (emphasis added). These contradictory statements create confusion rather than provide
23 clarity about the Project’s impacts.

24 71. Further, these inconsistent claims fail to address – let alone resolve – the overarching
25 problem that absent additional water to distribute to users, Alternative 4A will simply reprioritize
26 agricultural demands south of the Delta over other users.

27 72. Under any interpretation, the FEIR impermissibly downplays the significant impacts of
28 Alternative 4A on water supply for beneficial uses in the Delta, both instream and out. It never clearly

1 explains what will compensate for the missing water that would otherwise flow through the Delta, nor
2 does it attempt to mitigate for this significant impact.

3 **2. Biological Resources**

4 73. As repeatedly acknowledged by the FEIR, “the Delta is in a state of crisis.” FEIR ES-1, 1-
5 1. Indeed, “[s]everal threatened and endangered fish species, including Delta smelt and winter-run
6 Chinook salmon, have recently experienced the lowest population numbers in their recorded history.”
7 FEIR ES-1. Furthermore, water supplies “have already decreased significantly in recent years,
8 independent of the drought, due to regulatory actions by” multiple Federal and state agencies. *Id.* These
9 unsustainable levels of diversions and discharges allowed by the SWP and CVP are destroying the Bay-
10 Delta ecosystem. Rather than rectify this unfolding eco-catastrophe, the wrongly touted Alternative 4A
11 would just make matters worse.

12 74. Seventeen species of fish endemic to the Delta have already gone extinct with only twelve
13 indigenous species remaining. Critical habitat for the endangered Sacramento River winter run Chinook
14 salmon, Central Valley steelhead and spring run Chinook, the Delta smelt, and the Southern Distinct
15 Population Segment (“DPS”) of the Northern American green sturgeon suffers progressively worsening
16 degradation.² Alternative 4A includes three new North Delta water pumping and conveyance facilities,
17 each with an “intake capacity” of 3,000 cubic feet per second (“cfs”), which could very well push these
18 imperiled species to extinction.

19 75. As the situation in the Delta becomes more dire and fish populations continue their
20 precipitous decline, the impacts of the continued long-term operation of the CVP and SWP become more
21

22
23 ² Winter run Chinook salmon were declared threatened under the federal Endangered Species Act
24 (“ESA”) in 1990 (55 Fed.Reg 46515), and then due to continuing population declines, declared
25 endangered in 2005 (70 Fed.Reg 37160). Their critical habitat in the Sacramento River and its
26 tributaries was designated in 1993. 58 Fed.Reg. 33212. Spring run Chinook salmon were declared
27 threatened, and their critical habitat designated under the ESA in 2005. 70 Fed.Reg. 37160, 52488.
28 Central Valley steelhead were declared threatened in 2000 (65 Fed.Reg. 52084) and their critical
habitat was designated in 2005 (70 Fed.Reg 52488). The Southern DPS of North American green
sturgeon was declared threatened in 2006 (71 Fed.Reg 17757) and its critical habitat was designated in
2008 (73 Fed.Red 52084). Delta smelt were declared endangered in 1993 (58 Fed.Reg. 12854) and
their critical habitat was designated in 1994 (59 Fed.Reg. 65256).

1 severe.³ For example, fishing yields for Chinook salmon have plummeted in recent years.⁴ Indeed, the
2 2014 commercial catch shrunk to 151,367 Chinook from 285,592 in the previous year. *Id.* At the tail end
3 of the 2015 commercial season, preliminary yield numbers were only 96,878 Chinook. *Id.* Recreational
4 yields for Chinook have likewise fallen, from 112,022 Chinook in 2013 to 65,936 in 2014. *Id.* As of
5 August 31, 2015, this year’s yield was only 25,541 Chinook. *Id.* New information regarding eggs,
6 hatchlings and juvenile salmon only highlights these concerns. NMFS recently reported that “95 percent
7 of the winter-run chinook eggs, hatchlings and juvenile salmon *died this year* in the [Sacramento] river.”⁵
8 This was the second year in a row that “most of the juvenile salmon died.” *Id.* The effects of this rapid
9 decline can also be seen in this year’s juvenile fish count, which was “down 22 percent compared with
10 last year, which was also a bad year.” *Id.* This decline is especially disturbing given that in 2005
11 “officials counted 8.5 million winter-run juveniles,” but tallied only 217,489 this year. The ongoing
12 drought plaguing the state will only exacerbate these potential impacts. If we fail to protect these species
13 now, we may not have a chance in the future.

14 76. The FEIR fails to remedy the inadequacies in the discussion of impacts to fish and other
15 aquatic resources that Conservation Groups flagged in their previous comments. As a preliminary matter,
16 the FEIR makes it impossible to identify the changes from the DEIR/DEIS and RDEIR/RDEIS. While
17 the RDEIR/SDEIS incorrectly claimed to include “excerpts of text that originally appeared in the
18 [DEIR/DEIS], with underlining showing new language and strikeout showing eliminated text”
19 (RDEIR/SDEIS ES-11), this red-lined version fails to accurately reflect these changes, and neglects to

21 ³ Phillip Reese and Ryan Sabalow, *Feds scramble to avoid another mass salmon die-off in the*
22 *Sacramento River*, SACRAMENTO BEE (Sept. 5, 2015) (detailing some of the most recent challenges
23 facing Chinook salmon), available at:
<http://www.sacbee.com/news/state/california/water-and-drought/article34197762.html#storylink=cpy>

24 ⁴ Pacific Fisheries Council, Status Report for the 2015 Ocean Salmon Fisheries off Washington,
25 Oregon and California, Supplemental Informational Report 13 (Sept. 2015), available at:
26 [http://www.pcouncil.org/wp-content/uploads/2015/09/SUP_IR13_Salmon_Catch_Update_SEPT2015](http://www.pcouncil.org/wp-content/uploads/2015/09/SUP_IR13_Salmon_Catch_Update_SEPT2015_BB.pdf)
BB.pdf

27 ⁵ Fimrite, Peter, *Drought-Driven Salmon Deaths Could Have Far-Reaching Impact*, San Francisco
28 Chronicle, October 29, 2015, available at [http://www.sfgate.com/bayarea/article/Drought-driven-](http://www.sfgate.com/bayarea/article/Drought-driven-salmon-deaths-could-have-6596901.php)
salmon-deaths-could-have-6596901.php

1 identify significant new textual additions. *Compare* DEIR/DEIS 11-118 to 11-119 *with* RDEIR/SDEIS
2 Appendix A 11-31 to 11-34; *compare also* DEIR/DEIS 11-121 *with* RDEIR/SDEIS Appendix A 11-34
3 (unidentified text edits), DEIR/DEIS 11-125 *with* RDEIR/SDEIS Appendix A 11-36 to 11-37
4 (unidentified heading and text edits); *see also, e.g.,* RDEIR/SDEIS Appendix A 11-31 to 11-56, 11-84 to
5 11-98, 11-114 to 11-382, 11-387 to 11-410 (all containing *no* red-lined edited text). The FEIR makes no
6 attempt to show the changes it made.

7 77. The failure to provide a clear distinction between the DEIR/DEIS, RDEIR/SDEIS, and the
8 FEIR forecloses informed decisionmaking and thwarts the purposes of CEQA, which forbids an EIR that
9 is so deficient as to prevent meaningful public review and comment. Guidelines § 15088.5(a)(4);
10 *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412,
11 449 (agency’s “failure to address loss of Cosumnes River stream flows in the draft EIR ‘deprived the
12 public . . . of meaningful participation’” in the CEQA process). The procedural failure here leaves the
13 public with an FEIR that precludes meaningful analysis.

14 78. Even more egregious is the FEIR’s failure to adequately analyze the impacts of Alternative
15 4A, and continued reduced flows, on imperiled fish species. As amply discussed in Conservation
16 Groups’ DEIR/DEIS comment letter, the proposed reductions in freshwater flows in the Delta, the
17 Sacramento River, and their associated sloughs would adversely modify designated critical habitat for at
18 least five endangered and threatened species: the Sacramento River winter-run Chinook salmon, the
19 Central Valley spring-run Chinook Salmon, Central Valley steelhead, the southern distinct population
20 segment of North American green sturgeon, and the Delta smelt.

21 79. Both FWS and NMFS have found that continued operation of the CVP and SWP is likely
22 to jeopardize the continued existence of the Delta smelt and other beleaguered fish species. NMFS, June
23 4, 2009, *Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley*
24 *Project and State Water Project*; FWS, December 15, 2008, *Biological Opinion of the Coordinated*
25 *Operations of the Central Valley Project and State Water Project*. Furthermore, the 2014 Recovery Plan
26 for the Sacramento River winter-run Chinook salmon, the Central Valley spring-run Chinook salmon and
27 the California Central Valley steelhead confirmed that “recovery” of these three listed salmonid species
28 “would require that *no more populations are allowed to become extirpated* and that *habitat must be*

1 *expanded*” – *not contracted* – “to allow for the establishment of additional populations.” 2014 Recovery
2 Plan at 4. Despite these known devastating threats, the FEIR/FEIS still pushes for increased
3 unsustainable, fish-killing, water diversions via the proposed tunnels.

4 80. As discussed above, water that currently flows through the Sacramento River and sloughs
5 to and through the Delta would be diverted, further reducing freshwater flows through the sloughs and
6 Delta. These diversions would also likely necessitate changes in reservoir management in northern
7 California, and as a result reduce flows in the Trinity, Sacramento, American, and Feather Rivers. With
8 less water in the rivers and more water in the pipes of water exporters, the fish and the Delta ecosystem
9 will suffer, while the wasteful and polluting practices of many of those who use the exported Delta water
10 will be allowed to continue, if not expand.

11 81. There is a fundamental flaw to a plan that aims to restore ecosystems that have been
12 degraded by freshwater diversions by building new infrastructure that will divert *even more* fresh water.
13 Repeating past mistakes while hoping for a different outcome is the textbook definition of insanity.

14 **3. Land Use and Agriculture**

15 82. Diverting freshwater flows from the Delta will result in salt-water intrusion that will harm
16 the historic agricultural uses in the Delta and, as a consequence, convert important farmland to non-
17 agricultural resources. The FEIR’s discussion of this increased salinity improperly downplays the
18 significance of this impact. The FEIR admits that modeling for Alternative 4A shows an increase in
19 instances where water quality objectives for salinity (i.e., electric conductivity) are not met, and admits
20 that such an impact would harm agricultural beneficial uses of this water. FEIR 14-192 to 14-195.

21 83. Yet rather than acknowledge that this impact needs to be avoided, the FEIR retreats into
22 obfuscation. It claims that the water quality objective is exceeded only because the modeling uses “a
23 solution that is a simplified version of the very complex decision processes” that happen when there is
24 not enough water to go around. FEIR 14-125. This is nonsensical. Either the model is predictive, or it is
25 not. Moreover, the FEIR does not explain what would actually happen when “there is not enough water
26 supply to meet all requirements.” *Id.* Nor does it explain why the “complex decision” that is the direct
27 consequence of these excessive diversions would not lead to the results predicted by the model. *Id.*

28 84. As a result, the FEIR improperly downplays the significance of the increase in salinity on

1 agriculture. While it admits that “[i]ncreased salinity levels suggest that a number of crops using this
2 irrigation water may not be able to reach full yields . . .,” it illogically concludes just the *opposite*: that
3 “agricultural activities would be anticipated to continue on lands using these sources.” FEIR 14-125.

4 85. While the FEIR properly concludes that Alternatives 4 and 4A would have significant and
5 unmitigable impacts on agriculture, the underlying analysis nonetheless fails to account for the multi-
6 faceted harms of increased salinity. Without an accurate accounting of the ecological damage caused by
7 the preferred alternative, decisionmakers and the public will not fully comprehend the trade-offs that any
8 approval would require.

9 **4. Growth**

10 86. Chapter 30 of the FEIR correctly acknowledges that Alternative 4A’s net increase in
11 annual average CVP and SWP deliveries – compared to the No Action Alternative – has the potential to
12 induce growth, both in agricultural and urban settings. FEIR 30-68. Yet the FEIR incorrectly concludes
13 that the Project will not foster growth directly and that any indirect growth from increased water
14 deliveries “would likely still occur.” FEIR 30-115.

15 **5. Cultural Resources**

16 87. The FEIR improperly constrains the geographic extent of its cultural resource impacts
17 analysis. FEIR Appendix 18, Figure 18A-1. The FEIR acknowledges that Alternative 4A would impact
18 resources far beyond its artificial cultural resource impact analysis boundary, including Shasta Lake
19 (Reservoir) and the fish that rely on it and its tributaries. FEIR, Chapter 11. Yet it *entirely* fails to
20 analyze how those impacts, combined with the impacts of other foreseeable future projects, would affect
21 the Winnemem Wintu Tribe and their sacred cultural sites and resources. For example, the FEIR fails to
22 *even mention* the Winnemem Wintu’s sacred cultural sites in and around Shasta Lake, including its last
23 remaining sacred cultural sites on the McCloud River, and the salmon – a sacred resource for the Tribe –
24 that spawn there. FEIR Volume 2, Part 2-1, p. 259; Volume 2, Part 2-2, Comment Letter: 500-599, pp.
25 18, 27. This omission is particularly egregious given the Bureau of Reclamation’s proposal to raise the
26 height of Shasta Dam substantially, which would inundate the tribe’s sacred sites on the McCloud River.
27 The FEIR’s Cultural Resources chapter does not mention the Bureau’s proposal once. While the FEIR’s
28 Fish and Aquatic Resources chapter lists the Bureau’s Shasta Lake Water Resources Investigation, the

1 cursory associated cumulative impact analysis in Appendix 3D fails to mention impacts to the McCloud
2 river *at all*, let alone to the Winnemem Wintu’s sacred sites there. And even then, the FEIR only
3 references the Bureau’s outdated 2013 *draft* EIS for the Shasta Lake Water Resources Investigation,
4 despite the fact that it issued its *final* EIS and Feasibility Report over two years ago, on July 29, 2015.
5 FEIR 11-4139. These omissions violate CEQA’s informational disclosure purposes and requirements.

6 **6. Climate Change**

7 88. The FEIR’s analysis of global climate change is likewise inadequate. Climate change is
8 likely to reduce flows in the Delta, increase water temperatures, reduce dissolved oxygen, increase
9 salinity, and reduce the populations of fish species, adding additional stressors to an ecosystem already on
10 the verge of collapse. Yet the FEIR uses outdated assumptions about the amount of sea level rise that
11 climate change will cause. Sea levels are now projected to rise by *at least double* the amount the EIR
12 assumes. The FEIR’s blithe excuse that climate change is irrelevant because it will occur with or without
13 the WaterFix completely ignores whether climate change will cause the environmental impacts of the
14 WaterFix to be worse than the no action alternative due to alterations in water availability and flows. The
15 FEIR’s lack of substantive detail also makes it impossible for decisionmakers and the public to use the
16 FEIR to ascertain the extent to which the WaterFix’s environmental impacts will be *exacerbated* by
17 climate change.

18 **7. Impacts to Upstream Operations**

19 89. The FEIR’s claims that the WaterFix would not impact the Trinity River, or other
20 upstream operations such as the Shasta Reservoir, defies logic. The purpose of the WaterFix is to better
21 meet full CVP contractual commitments; upstream operations will necessarily be affected by that goal
22 through depleted reservoir storage, an increase in the occurrence of extremely low water levels, and the
23 exacerbating effects of climate change. The Trinity River is already many times over-appropriated,⁶ and
24 the WaterFix will increase water demand on the Trinity River, thereby increasing the risk of catastrophic

26 ⁶ FEIR Master Response 32 shows that Trinity River water permits issued to Reclamation allow storage
27 and diversion of *many times more water than is available annually in the Trinity River*, even in the
28 wettest of years. FEIR at 1-284. The Environmental Water Caucus found that “total consumptive
water rights claims for the Sacramento and Trinity River basins exceed annual average unimpaired
flows by a factor of 5.6 acre-feet of claims per acre-foot of flow.” Comment DEIRS778-64.

1 fish mortality from low water level events. The FEIR ignores this impact and thus fails as an
2 informational document.

3 **The FEIR Lacks an Adequate Cumulative Impacts Assessment**

4 90. An EIR must discuss cumulative impacts when a “project’s incremental effect is
5 cumulatively considerable.” Guidelines § 15130(a). A “cumulative impact” refers to “two or more
6 individual effects which, when considered together, are considerable or which compound or increase
7 other environmental impacts.” Guidelines § 15355. “Cumulative impacts can result from individually
8 minor but collectively significant projects taking place over a period of time.” Guidelines § 15355(b).
9 The cumulative impacts discussion must include either a “list of past, present, and probable future
10 projects producing related or cumulative impacts,” or “a summary of projections contained in an adopted”
11 broader plan “that describes or evaluates the conditions contributing to the cumulative effect.”
12 Guidelines § 15130(b). “The Agency must interpret this requirement in such a way as to ‘afford the
13 fullest possible protection of the environment.’” *Friends of the Eel River v. Sonoma County Water*
14 *Agency* (2003) 108 Cal.App.4th 859, 868-869, quoting *Citizens Assn. for Sensible Development of Bishop*
15 *Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 168.

16 91. Contrary to these requirements, the FEIR fails to adequately assess the Project’s
17 cumulative impacts. First, because the FEIR’s analysis of the Project’s impacts is too vague to be useful,
18 its similarly vague cumulative impacts analysis is necessarily inadequate. Without fully describing and
19 analyzing the Project’s impacts, the FEIR could not adequately identify and analyze its cumulative
20 impacts. The cumulative impacts assessment is plagued by meaningless generalities such as: Such vague
21 statements are entirely unhelpful.

22 92. Second, the FEIR entirely fails to identify and discuss the potential impacts of the Project
23 on upstream reservoir operations, or how regulations related to the reservoirs and tunnels will affect
24 Project operations. In *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th
25 859, 871, the court held that the EIR’s cumulative impacts discussion was insufficient because it failed to
26 acknowledge that curtailed diversions from the Eel River into the Russian River could cause the Sonoma
27 County Water Agency to fail to “supply water to its customers in an environmentally sound way.”
28 Likewise, in *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953, the

1 court rejected an EIR because it failed to “demonstrate the timing, location and amount of water releases
2 from the upper watershed lakes and analyze the resulting lake levels” occasioned by the downstream
3 water project’s proposed diversions. The FEIR’s failure to fully acknowledge and discuss the likely
4 effects on upstream reservoir operation of the Project’s downstream diversions frustrates the ability of the
5 public to understand the Project and its impacts, and has led to an inadequate range of alternatives, as
6 discussed above. These omissions violate CEQA.

7 93. Third, the FEIR does not include a cumulative impact discussion specific to Alternative
8 4A, and instead scatters this information throughout the FEIR’s discussion of the potential cumulative
9 impacts of all Alternatives. In Chapter 11, the FEIR claims that Alternative 4A will not have a
10 cumulatively considerable impact on migrating fish, even though it could reduce flows and flow
11 temperatures are expected to increase. FEIR 11-4155. Yet the FEIR relies upon release shifts from
12 various reservoirs to prevent adverse impacts. *Id.* As noted above, the attempts to preserve cooler flows
13 for salmon over the last two years have failed. The FEIR does not address how Reclamation and DWR
14 will be able to preserve cooler temperature flows in the future in ways they are unable to do so now.
15 Reliance upon such undefined and wholly speculative shifts in release timing is insufficient mitigation to
16 prevent this cumulatively considerable impact.

17 **The FEIR’s Mitigation Measures Are Inadequate**

18 94. An EIR’s discussion of proposed mitigation measures must be sufficiently specific to
19 enable the public to evaluate and comment upon the adequacy of the alternatives and mitigation
20 measures. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794.
21 Allowing agencies to defer formulating mitigation measures until “after completion of the CEQA process
22 significantly undermines CEQA’s goals of full disclosure and informed decision making”; the
23 “development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation
24 . . . but rather, an open process that also involves other interested agencies and the public.” *Communities*
25 *for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

26 95. The FEIR’s mitigation measures are inadequate because they are either too vague or have
27 not yet been formulated. For example, and for illustrative purposes only, the FEIR states that a future
28 consultation process under the Endangered Species Act will ensure that “impacts to critical habitat will be

1 avoided, minimized, and mitigated.” Response to Comment RECIRC2836-13. But the public is entitled
2 to review and comment upon the adequacy of the measures that DWR will undertake to avoid impacts to
3 endangered species. Moreover, those mitigation measures may themselves have substantial
4 environmental impacts, as the U.S. EPA noted in its comments on the RDEIR. Comment Letter
5 CECIRC2577 at 4 (“Biological Opinion and Incidental Take Permits . . . could result in environmental
6 impacts that have not been analyzed”).

7 96. Similarly, the FEIR relies upon a slew of “environmental commitments” and “resource
8 restoration and performance principles” (capitalization altered), in addition to traditional mitigation
9 measures, in its determinations that Alternative 4A will have no significant impacts on a host of
10 resources. *See, e.g.*, FEIR 12-3426 (loss of valley/foothill riparian natural community), 12-3444 (loss of
11 vernal pool/alkali seasonal wetland complex), 12-3504-3506 (giant garter snake), 12-3716 to 12-3721
12 (San Joaquin kit fox and American badger). While these measures are not called mitigation measures in
13 the FEIR, it is clear that Reclamation and DWR intend them to be CEQA mitigation measures to lessen
14 otherwise significant impacts. FEIR ES-17.

15 97. But it does not appear that these vague commitments qualify as enforceable mitigation
16 measures that would satisfy CEQA, absent additional information. Guidelines § 15126.4(a)(2)
17 (“Mitigation measures must be fully enforceable”). Nor have the impacts to be mitigated even been
18 specifically acknowledged to be significant. The FEIR fails to identify and analyze the significance of
19 these and similar impacts, and instead it impermissibly presumes that its claimed environmental
20 commitments and resource restoration and performance principles will obviate these impacts. This
21 deliberate attempt to obscure, and thereby ignore, these severe impacts violates CEQA. *Lotus v.*
22 *Department of Transportation* (2014) 223 Cal.App.4th 645, 658 (failure to discuss significance of impact
23 before proposing a mitigation “subverts the purposes of CEQA by omitting material necessary to
24 informed decision-making and informed public participation”).

25 98. Indeed, in some instances the FEIR admits that in the absence of the proposed
26 environmental commitments or resource restoration activities, impacts will be significant. FEIR 12-3506
27 (garter snake) 12-3717 (San Joaquin kit fox and American badger). In order to prevent these significant
28 impacts, all mitigation measures must be clearly enforceable. Guidelines § 15126.4(a)(2). Yet no

1 assurance is provided that they will be, and in light of the abysmal failure of similar facile assurances to
2 prevent ecological harm in the past, this failure is fatal.

3 99. The FEIR's repeated deferral of mitigation formulation evades CEQA's requirements.
4 DWR's "requirement that the applicant adopt mitigation measures recommended in a future study is in
5 direct conflict with the guidelines implementing CEQA." *Sundstrom v. County of Mendocino* (1988) 202
6 Cal.App.3d 296, 306. By improperly deferring the formulation of mitigation measures until after Project
7 approval, DWR violated CEQA. PRC §§ 21100(b)(3); Guidelines §§ 15126(e), 15126.4, 15370; *Kings*
8 *County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727-728.

9 **DWR's Responses to Comments Are Inadequate**

10 100. CEQA requires DWR to provide detailed responses to comments that raise significant
11 environmental issues. Guidelines § 15088. Its responses must show a "good faith, reasoned analysis,"
12 and must be supported by factual information. *Id.*; *Laurel Heights Improvement Assn. v. Regents of*
13 *University of California* (1993) 6 Cal.4th 1112, 1124.

14 101. If a comment raises significant environmental issues and the agency chooses not to accept
15 its suggestions, the agency must explain why. Guidelines § 15088(c); *Flanders Foundation v. City of*
16 *Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615. Meaningful agency response to public comment is
17 fundamental to CEQA's informational purpose. "Conclusory statements unsupported by factual
18 information will not suffice." Guidelines § 15088(c). A failure to adequately respond to comments
19 renders an EIR "fatally defective." *People v. County of Kern* (1974) 39 Cal.App.3d 830, 842.

20 102. DWR failed to provide "good faith, reasoned analysis" in response to numerous public
21 comments. For example, and for illustrative purposes only, petitioners repeatedly pointed out that the
22 FEIR unlawfully failed to consider an alternative that would significantly reduce exports from the Delta,
23 and specifically suggested adoption of the Environmental Water Caucus' "Responsible Exports Plan."
24 Comment DEIRS1735-8. But in response, the FEIR simply refers the reader to Master Response 4 (*id.*),
25 which contains no specific discussion of the Environmental Water Caucus' suggested alternative. *See*
26 *generally* FEIR at 1-42 through 1-46. This response fails to provide good faith, reasoned analysis, and is
27 therefore inadequate.

28 103. By failing to provide "good faith, reasoned analysis" in response to public comment, DWR

1 violated CEQA. Guidelines § 15088(c); *Flanders Foundation*, 202 Cal.App.4th at 615.

2 **The FEIR Does Not Include Sufficient Information for**
3 **Responsible Agencies to Discharge Their Duties**

4 104. Responsible agencies rely upon lead agencies' environmental documents when
5 determining whether to issue a later approval for a project. The EIR must include sufficient information
6 and analysis for those agencies to discharge their duties. *E.g.*, *Habitat and Watershed Caretakers*, 213
7 Cal.App.4th at 1298 ("the EIR was required to provide both [the lead agency] and [the responsible
8 agency] with information about the environmental consequences of the decisions that they would be
9 making with regard to the whole project"); PRC § 21104, 21165(a); Guidelines §§ 15050; 15082; 15096.

10 105. Here, the FEIR fails to include such information. As the U.S. EPA noted in its comment
11 letter dated October 30, 2015 (RECIRC-2577 at 3-4), two of the SWRCB's future planning processes will
12 have substantial effects on the shape of the WaterFix: an update to water quality standards, and a petition
13 by DWR and Reclamation to add points of diversion for the WaterFix, both of which could lead to higher
14 flow requirements and have environmental consequences "that have not been analyzed in the" FEIR.
15 Comment letter RECIRC-2577 at 4. Yet the FEIR completely fails to study any alternatives that would
16 substantially increase in-stream flows, and it does so on the basis that only other agencies have the
17 authority to mandate such actions. *See, e.g.*, FEIR at 1-44 to 1-45 (alternatives that would significantly
18 increase instream flows were excluded because DWR and Reclamation lack the legal authority to make
19 such changes); FEIR at Response to Comment RECIRC2577-1 ("It would . . . be speculative to estimate
20 that [increased] flows might be imposed as part of . . . the SWRCB's Bay Delta [Water Quality Control
21 Plan] update"); *see also* Comment letter RECIRC-2577 at 2 (EIR also fails to include information
22 sufficient for a decision to be made on a Clean Water Act section 404 permit). But the FEIR itself is
23 required to include sufficient information for these agencies to discharge their duties. *Habitat and*
24 *Watershed Caretakers*, 213 Cal.App.4th at 1304 (EIR inadequate because it did not contain an analysis of
25 alternative courses of action that could be taken by the responsible agency); *Banning Ranch Conservancy*
26 *v. City of Newport Beach* (2017) 2 Cal.5th 918, 936 ("Here, the City ignored its obligation to integrate
27 CEQA review with the requirements of the Coastal Act, and gave little consideration to the Coastal
28 Commission's needs").

1 106. Because the FEIR contains no analysis of how these future regulatory processes will affect
2 the environmental impacts of the WaterFix, “any attempt to describe the environmental impacts of the
3 project is necessarily incomplete.” Comment letter RECIRC-2577 at 4. The failure of the FEIR to
4 provide information sufficient for all responsible agencies to discharge their duties violates CEQA.
5 *Habitat and Watershed Caretakers*, 213 Cal.App.4th at 1298; PRC §§ 21104, 21165(a); Guidelines §§
6 15050; 15082; 15096.

7 **DWR’s Findings and Statement of Overriding Considerations**

8 **Are Not Supported by Substantial Evidence**

9 107. If a project will have “significant environmental effects,” CEQA requires the agency to
10 make “one or more written findings for each of those significant effects, accompanied by a brief
11 explanation of the rationale for each finding.” Guidelines § 15091(a). There are three “possible
12 findings”:

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

19 Guidelines §15091(a); P.R.C. § 21081(a). The findings “shall be supported by substantial evidence in the
20 record.” Guidelines § 15091(b). Where, as here, an agency approves a project that has significant
21 environmental effects that “are not avoided or substantially lessened,” the agency must “state in writing
22 the specific reasons to support its action.” Guidelines §§ 15093(b); 15096(h), 15064(a)(2). This
23 “statement of overriding considerations shall be supported by substantial evidence,” Guidelines section
24 15093(b), and is to be made in addition to the findings required under section 15091. Guidelines §
25 15091(f).

26 108. Requiring such findings and, when necessary, a statement of overriding considerations,
27 ensures that the agency carefully considers the proposed action’s environmental effects and makes its
28 decisionmaking process transparent. The “intended effect is to facilitate orderly analysis and minimize
the likelihood that the agency will randomly leap from evidence to conclusions.” *Topanga Assn. for a*

1 *Scenic Com. v. County of Los Angeles* (1974) 11 Cal.3d 506, 516-517. Since they lay out the agency’s
2 rationale, findings also help courts to police agency compliance with CEQA’s required procedures. *Mira*
3 *Mar Mobile Com. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 496 (noting that “findings must
4 ‘bridge the analytic gap between the raw evidence and ultimate decision,’ so as to allow a reviewing court
5 ‘to trace and examine the agency’s mode of analysis’”) (citation omitted).

6 109. In order to make the findings required under CEQA, an EIR must properly identify and
7 fully analyze the Project’s myriad significant environmental impacts. As discussed above, the FEIR
8 completely fails to do so. DWR’s CEQA findings, which are based on this impacts analysis, are therefore
9 necessarily defective.

10 110. Likewise, the FEIR fails to consider alternatives such as reduced Delta exports that would
11 feasibly attain most of the Project’s objectives of “sustainable management” to protect and enhance the
12 Delta’s ecologic health while providing a “more reliable water supply for the state” to meet consumptive
13 needs. Where, as here, an agency has failed to determine whether there are feasible alternatives that
14 would avoid a project’s significant environmental impacts (or reduce them to insignificance), its contrary
15 findings are “necessarily invalid.” *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th
16 587, 603; *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368.

17 111. Moreover, DWR’s findings and statement of overriding consideration lack substantial
18 evidentiary support. This omission violates CEQA. P.R.C. §§ 21081.5; Guidelines §§ 15091(b),
19 15093(b).

20 **SECOND CAUSE OF ACTION**

21 **(Violation of the 2009 Delta Reform Act)**

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

23 112. The paragraphs set forth above and below are realleged and incorporated herein by
24 reference.

25 113. The Delta Reform Act, Water Code sections 85000 *et seq.*, was passed by the Legislature
26 in recognition of the fact that the “The Sacramento-San Joaquin Delta watershed and California’s water
27 infrastructure are in crisis” and that “[r]esolving the crisis requires fundamental reorganization of the
28 state’s management of Delta watershed resources.” Water Code § 85001(a). The Legislature’s goal was

1 “to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide
2 for a more reliable water supply for the state, to protect and enhance the quality of water supply from the
3 Delta, and to establish a governance structure that will direct efforts across state agencies to develop a
4 legally enforceable Delta Plan.” *Id.* § 85001(c).

5 114. The Delta Reform Act requires any state agency “that proposes to undertake a covered
6 action” to “prepare a written certification of consistency with detailed findings as to whether the covered
7 action is consistent with the Delta Plan” and submit that written finding to the Delta Stewardship
8 Council. Water Code § 85225. The WaterFix is a “covered action” under the Delta Reform Act. Water
9 Code §§ 85057.5(a)-(b).

10 115. The Delta Plan prepared by the Delta Stewardship Council was found invalid and set aside
11 by the Sacramento Superior Court because it failed to satisfy the requirements of the Delta Reform Act.
12 Specifically, the Delta Plan failed to include “quantified or otherwise measurable targets associated with
13 achieving reduced Delta reliance, reduced environmental harm from invasive species, restoring more
14 natural flows, and increased water supply reliability, in accordance with the Delta Reform Act.” Ruling
15 on Submitted Matter, JCCP 4758 (Sacramento Superior Court, May 18, 2016) at 26. The Court also
16 found the Delta Plan to be inadequate because it unlawfully failed to “[p]romote options for water
17 conveyance and storage systems,” as required by the Delta Reform Act. *Id.* at 72.

18 116. DWR plans to file a certification of consistency at some unspecified future date *after* its
19 final approval of the WaterFix. FEIR at 1-277. But under the Delta Reform Act, DWR cannot approve
20 the WaterFix without *first* making a determination of consistency with the Delta Plan. Water Code §
21 85225. And because approval of the WaterFix would reduce flows in the Delta, it is likely to be
22 *inconsistent* with numerous components of any adequate Delta Plan. For example, reducing the Delta’s
23 flows will conflict with the Delta Plan’s required – but as yet, unadopted – quantified targets to *restore*
24 the Delta’s natural flows. Water Code §§ 85302(c), 85302(e), 85308(b). Rather than approve the
25 WaterFix and then hope it is consistent with the Delta Plan, DWR was required to *wait* until after the
26 Delta Plan is revised to approve the WaterFix in order to ensure that the WaterFix is consistent with the
27 legally enforceable policies embodied in the Delta Plan and Delta Reform Act.

28 117. Because DWR failed to “prepare a written certification of consistency with detailed

1 findings as to whether the covered action is consistent with the Delta Plan” as required by the Delta
2 Reform Act, its approval must be set aside. Water Code § 85225.

3 **THIRD CAUSE OF ACTION**

4 **(Violation of the Public Trust Doctrine)**

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

6 118. The paragraphs set forth above and below are realleged and incorporated herein by
7 reference.

8 119. Water Code section 85023 states, “the longstanding constitutional principle of reasonable
9 use and the Public Trust Doctrine shall be the foundation of state water management policy and are
10 particularly important and applicable to the Delta.”

11 120. In *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426, the court noted
12 that the public trust doctrine mandates that “before state courts and agencies approve water diversions
13 they . . . consider the effect of such diversions upon interests protected by the public trust, and attempt, so
14 far as feasible, to avoid or minimize any harm to those interests.” The *National Audubon Society* Court
15 went on to explain:

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

21 *Id.*, citations omitted.

22 121. “Public trust easements are traditionally defined in terms of navigation, commerce and
23 fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and
24 general recreation purposes the navigable waters of the state, and to use the bottom of the navigable
25 waters for anchoring, standing, or other purposes.” *Marks v. Whitney* (1971) 6 Cal.3d 251, 259. For
26 nearly 50 years it has been settled law in California that public trust values also “encompass[] . . . the
27 preservation of those lands in their natural state, so that they may serve as ecological units for scientific
28 study, as open space, and as environments which provide food and habitat for birds and marine life, and

1 which favorably affect the scenery and climate of the area.”

2 122. The WaterFix will adversely affect numerous public trust resources. Even the inadequate
3 FEIR acknowledges that Alternative 4A will increase the concentration of chemicals in the Delta, harm
4 fish, and reduce recreational opportunities, in addition to the significant impacts, discussed above, that
5 the FEIR ignores.

6 123. Numerous feasible alternatives exist that would mitigate or avoid these significant
7 impacts, including, but not limited to, the Environmental Water Caucus’ Responsible Exports Plan. Such
8 alternatives would reduce diversions, have beneficial effects on fish and wildlife, and attain most of the
9 Project’s basic objectives.

10 124. By approving the Project despite the fact that feasible alternatives exist that would
11 preserve public trust resources to a greater extent than the Project, DWR abdicated its statutory and
12 constitutional obligation to preserve public trust resources to the maximum extent feasible, based on a
13 fair and fully informed balancing of the impacts of these alternatives on public trust resources.

14 **FOURTH CAUSE OF ACTION**

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

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

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

18 125. The paragraphs set forth above and below are realleged and incorporated herein by
19 reference.

20 126. DWR proceeded in excess of its jurisdiction and abused its discretion in purporting to
21 approve the Project and to certify the FEIR thereon, because such approvals violate C.C.P. sections 1085
22 and 1094.5 in the following respects, among others:

- 23 a. such approvals were not granted in accordance with the procedures required by
24 law;
- 25 b. such approvals were not based on the findings required by law; and
- 26 c. such approvals were not based on, or were contrary to, the evidence in the record
27 before DWR.

28 127. DWR failed to proceed in the manner required by law in the following respects, among

1 others:

- 2 a. DWR violated CEQA as alleged hereinabove;
- 3 b. DWR violated the Delta Reform Act as alleged hereinabove; and
- 4 c. DWR violated the Public Trust Doctrine as alleged hereinabove.

5 128. DWR's actions in approving the Project without complying with the procedures required
 6 by C.C.P. sections 1085 and 1094.5 exceeded DWR's jurisdiction and constitute a prejudicial abuse of
 7 discretion, and therefore are invalid and must be set aside.

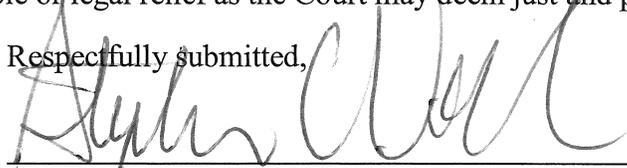
8 **PRAYER FOR RELIEF**

9 WHEREFORE, petitioners pray for relief as follows:

- 10 1. For interlocutory and permanent injunctive relief restraining DWR from taking any action
 11 to carry out the Project pending, and following, the hearing of this matter;
- 12 2. For a peremptory writ of mandate directing DWR to set aside and vacate its approval of
 13 the Project, and certification of its FEIR;
- 14 3. For declaratory relief declaring the Project, its approval, and its FEIR to be unlawful;
- 15 4. For a peremptory writ of mandate directing DWR to suspend all activity implementing the
 16 Project that could result in any change or alteration in the physical environment until it has taken all
 17 actions necessary to bring its approval of the Project and its FEIR into compliance with CEQA, the Delta
 18 Reform Act, the Public Trust Doctrine and the Code of Civil Procedure;
- 19 5. For attorneys' fees under Code of Civil Procedure section 1021.5;
- 20 6. For costs incurred in this action; and
- 21 7. For such other equitable or legal relief as the Court may deem just and proper.

22 Dated: August 17, 2017

Respectfully submitted,

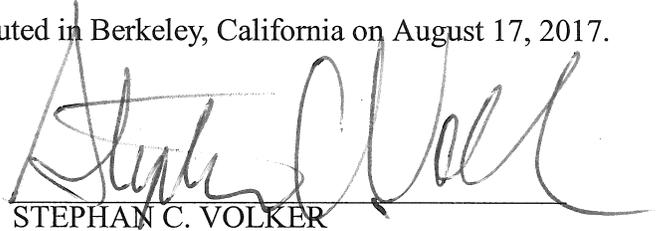


23
 24 **STEPHAN C. VOLKER**
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 25 NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU
 26 TRIBE, INSTITUTE FOR FISHERIES RESOURCES, PACIFIC
 COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS,
 27 and SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION
 28

VERIFICATION

I, Stephan C. Volker, am the attorney for petitioners/plaintiffs in this action. I make this verification on behalf of the petitioners/plaintiffs because such parties and their representatives are absent from the county in which my office is located. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Attorneys' Fees and know its contents. The facts therein alleged are true and correct to the best of my knowledge and belief, and are based on documents within the public records underlying the approvals herein challenged.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed in Berkeley, California on August 17, 2017.



STEPHAN C. VOLKER

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