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11 [ADDITIONAL COUNSEL LISTED ON FOLLOWING PAGE]

12 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 CENTRAL DELTA WATER AGENCY,  
15 SOUTH DELTA WATER AGENCY,  
16 LOCAL AGENCIES OF THE NORTH  
17 DELTA, LAFAYETTE RANCH, INC., and  
18 CINDY CHARLES,

19 Petitioners and Plaintiffs,

20 vs.

21 DELTA STEWARDSHIP COUNCIL and  
22 DOES 1-100, inclusive ,

23 Respondent and Defendant.

**CASE NO.:**

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**(Pub. Resources Code, §§ 21168, 21168.5;  
Code Civ. Proc., §§ 1060, 1085, 1094.5)**

**CEQA CASE**

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2 DANTE JOHN NOMELLINI, JR. (SBN 186072)  
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Attorneys for Petitioner Local Agencies of the North Delta

## INTRODUCTION

1  
2 1. The Sacramento-San Joaquin Delta (the “Delta”) is the largest estuary on the west  
3 coast of the Americas. The Delta supports some of the most productive farmland in the world,  
4 wineries and other agriculture-related enterprises, a sports-fishing and recreation industry, many  
5 cities and communities, and hundreds of aquatic and terrestrial species (some of which are  
6 unique to the Delta and at risk of extinction). Rich in history and culture, the Delta is also a  
7 core component of California’s water system, from which water flows to rural and urban users  
8 throughout California. The Delta is a critical component of the San Francisco Bay Delta  
9 Estuary.

10 2. Finding that “the Sacramento-San Joaquin Delta watershed and California’s water  
11 infrastructure are in crisis and existing Delta policies are not sustainable,” the California  
12 Legislature passed the Sacramento-San Joaquin Delta Reform Act of 2009 (“Delta Reform  
13 Act”) (Wat. Code, § 85000 et. seq.). The Delta Reform Act aptly describes the Delta as “a  
14 critically important natural resource for California and the nation” which “serves Californians  
15 concurrently as both the hub of the California water system and the most valuable estuary and  
16 wetland ecosystem on the west coast of North and South America.” (Wat. Code, § 85002.)

17 3. The Delta Reform Act resulted in formation of the California Delta Stewardship  
18 Council (“Council”). (Wat. Code, §§ 85200, et seq.) Chief among the Council’s task is  
19 preparation of a comprehensive long-term management plan for the Delta – the Delta Plan. The  
20 Council approved the May 2013 Proposed Final Draft Delta Plan (“2013 Delta Plan”) and  
21 adopted Regulations Implementing the Delta Plan (“Regulations”, which are proposed to be  
22 incorporated into Title 23 of the California Code of Regulations) on May 16, 2013, and May  
23 17, 2013, respectively.<sup>1</sup>

24 4. The Delta Plan fails to comply with key provisions of the Delta Reform Act and  
25 other enactments designed to protect the Delta, including its historic and established  
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27 <sup>1</sup> The Delta Plan contains 14 regulatory policies, as well as 73 non-binding  
28 recommendations; these policies and recommendations are labeled according to the name of  
each chapter of the Delta Plan. The 14 regulatory policies are proposed to become Regulations  
once approved by the Office of Administrative Law.

1 communities, its agriculture, and its other industries. In its rush to assert authority over water  
2 use, the Council also contravened existing state laws designed to protect water priority for the  
3 Delta and other areas of origin. Moreover, while the Delta Reform Act gave the Council  
4 limited authority over land use, the adopted Delta Plan’s land use provisions far exceed the  
5 scope of that authority, and fails to meet the Delta Reform Act policy goal of protecting the  
6 Delta as a “place.” (See, e.g., Wat. Code, § 85020, subd. (b).)

7 5. This action challenges the Council’s decision to approve the Delta Plan, including  
8 its Policies, Recommendations and Regulations. It also challenges the Council’s certification of  
9 the Final Programmatic Environmental Impact Report (“PEIR”) and adoption of Findings and  
10 Statement of Overriding Considerations for the Delta Plan pursuant to the California  
11 Environmental Quality Act. (Pub. Resources Code, § 21000 et seq. “CEQA”); Cal. Code  
12 Regs., tit. 14, §15000 et seq. (“CEQA Guidelines”).)

13 6. Petitioners are those with a particular interest in protecting the Delta, including  
14 local agencies, private landowners and others whose land and water uses and other activities  
15 within the Delta are adversely affected by the Council’s adoption of a Delta Plan that conflicts  
16 with statutory mandates, and by the Council’s failure to disclose the reasonably foreseeable  
17 environmental consequences of implementing the adopted Delta Plan, as required by CEQA.  
18 Over many years, Petitioners herein have demonstrated their sustained commitment to the  
19 Delta, and participated in the various Delta planning processes, including the Delta Plan process  
20 itself.

21 7. Existing law provides special protection for the Delta and other areas of origin.  
22 On the one hand, the Delta Plan acknowledges that “during droughts and other periods of water  
23 shortages, the ability of the [State Water Project (“SWP”) and federal Central Valley Water  
24 Project (“CVP”)] to divert water from the Delta is limited by riparian owners and by more  
25 senior appropriative water rights” and that area of origin protections for water rights senior to  
26 the SWP and CVP contractors exist for the purpose of assuring that “local demands might be  
27 met before water becomes available for export.” (2013 Delta Plan, p. 82.) On the other hand,  
28

1 however, the Delta Plan fails to protect the very people and areas of origin most directly and  
2 adversely affected by the Delta Plan and other ongoing “Delta planning” efforts.

3 8. California water interests reliant on water exported from the Delta may need to  
4 implement water conservation measures and/or pay higher market prices for water. However,  
5 their homes and local environments will not be dramatically changed as a result of the Delta  
6 Plan and related actions. For the Delta, however, it is an entirely different story. The Delta  
7 Plan would impose major land use and water changes that will directly displace local people,  
8 homes and businesses in the Delta. While some public land is available for these projects, there  
9 is not enough, and thousands of acres of private land is proposed to be taken and converted to  
10 public uses. For instance, the Bay Delta Conservation Plan (“BDCP”), which is extensively  
11 discussed and recommended in the Delta Reform Act, proposes to convert enough farmland to  
12 various “habitat” types that it will be visible from space. At the same time, the BDCP proposes  
13 to construct an “isolated conveyance” (tunnels moving water from the Sacramento River in the  
14 north Delta directly to the export pumps) nearly equal to the entire existing pumping capacity of  
15 the CVP and SWP pumps in the south Delta.

16 9. The Delta Plan unequivocally recommends completion of the BDCP. Although  
17 the Delta Reform Act provided a pathway by which the BDCP might become part of the Delta  
18 Plan, that pathway included important checks and balances to ensure that the coequal goals and  
19 other important policies are met. The Delta Plan gives these checks and balances mere lip  
20 service, however, and in some case ignores them altogether. In the end, the Delta Plan in its  
21 current form simply serves as a vessel to hold the BDCP, while heavily regulating far less  
22 important stressors on the achievement of the co-equal goals.

23 10. The Delta Plan PEIR barely mentions the known potential effects of BDCP,  
24 including the effects of its proposed conveyance (the new “Tunnels”) and conversion of  
25 farmland to habitat, which result in numerous significant and unavoidable impacts, according to  
26 the March 2013 BDCP Administrative Draft EIR/EIS. The PEIR then carefully ignores the  
27 likely impacts of the BDCP and other likely early-term projects in each of the individual  
28 resource chapters. Each impact section misleadingly states that the Project “does not direct the

1 construction of specific projects and would not directly result in construction or operation of  
2 projects or facilities; therefore, it would result in no direct impacts on any resources.”

3 11. The PEIR does not describe the BDCP’s impacts in the context of cumulative  
4 impacts. As is fully evident from extensive documentation available to the Council and the  
5 numerous briefings provided to the Council by BDCP proponents, the BDCP is a specific  
6 project that proposes construction of specific diversion facilities, and specific acres and types of  
7 habitat creation. The BDCP will impose many significant – indeed, dramatic – environmental  
8 effects related to the Delta Plan, and at the very least, must be fully analyzed as a cumulative  
9 project. (CEQA Guidelines, § 15130, subd. (b).)

10 12. The Council’s decision not to disclose the full scale of impacts associated with  
11 implementation of the BDCP despite the Council’s close relationship to implementation of the  
12 BDCP itself was an abuse of discretion. The Council cannot claim it did not know the details  
13 of the BDCP, perhaps the largest construction and habitat conservation plan in California  
14 history, which has been underway for the past seven (7) years and which is repeatedly  
15 referenced in the Delta Plan and the Delta Reform Act.

16 13. The PEIR fails to provide the accurate project description required to permit a  
17 meaningful environmental analysis, in part because it relegates what little substantive  
18 discussion of the BDCP it includes at all to a separate chapter.

19 14. The Delta Reform Act mandated that the Delta Plan to be developed by the  
20 Council improve water quality to protect human health and the environment consistent with  
21 achieving water quality objectives in the Delta. Like many other provisions in the Delta  
22 Reform Act, this directive was intended to force the Council to re-examine long-term water  
23 quality issues in the Delta and propose actions to improve water quality for all beneficial uses.  
24 The Delta Plan fails to address one of the main water quality issues facing the Delta: the  
25 southern Delta salinity and flow problems that exist today due to the CVP/SWP. This problem  
26 would be compounded under the BDCP.

27 15. Current water quality standards in the southern Delta (officially known as water  
28 quality objectives for the protection of agricultural beneficial uses) are regularly violated and

1 never enforced. The salinity standard of 0.7 EC from April through August and 1.0 EC from  
2 September through March were developed in 1978, but first adopted in a Bay-Delta Water  
3 Quality Control Plan in 1995. Partially adopted in the State Water Resources Control Board  
4 (“SWRCB”) D-1641 in 2000, these standards did not become fully effective until April of  
5 2005. Since their adoption in 1995, the standards have been violated regularly in not only most  
6 summers but also many winters and falls. Notwithstanding the regularly occurring violations,  
7 the SWRCB has taken no action to enforce the standards against the parties charged with  
8 compliance. The SWRCB’s only actions to date are a Cease and Desist Order, and its  
9 amendment which merely require the responsible parties to “obviate future threatened  
10 violations” rather than mandate compliance. At the time of this filing, the salinity standard of  
11 0.7 EC, measured at Tracy Boulevard Bridge on Old River is being violated without  
12 consequence. The SWRCB’s current efforts are plainly aimed at relaxing the standard rather  
13 than enforcing the standard.

14 16. The cause of the southern Delta salinity problem is the operation of the CVP,  
15 which, in coordination of the SWP, delivers hundreds of thousands of tons of salt from the  
16 southern San Joaquin Valley, where agricultural use of the water concentrates the salts, which  
17 then re-enter the San Joaquin River and eventually flow into the southern Delta. This constant  
18 inflow of salt is exacerbated by: (i) the CVP’s decrease of San Joaquin River flow; and (ii) the  
19 two projects’ export pumping, which alters in-Delta flows and lowers water levels. The  
20 combined operations of the export projects transform the southern Delta into a stagnant area in  
21 which salts concentrate and adversely affect local crop production, and in most years, prevent  
22 the San Joaquin River flow from reaching the Bay.

23 17. The Delta Plan and PEIR virtually ignores the issue. It does not examine the  
24 causes and effects of the projects on southern Delta water quality, does not examine how this  
25 situation affects human health or the environment, does not examine how water quality  
26 standards may be met, and does not examine how the proposed BDCP will exacerbate the  
27 problem. Moreover, the Delta Plan and the PEIR fail to discuss, analyze or disclose the  
28

1 likelihood of the BDCP proposed Tunnels markedly worsening water quality in the northern  
2 Delta, which also must be protected by law.

3 18. Because fundamental defects of law permeate the Delta Plan, it must be set aside.  
4 Petitioners accordingly request that this Court issue a writ of mandate directing the Council to  
5 vacate and set aside the approval of the Delta Plan, certification of the PEIR, and adoption of  
6 the Regulations. Petitioners also seek declaratory relief that the Council's actions: (1) violated  
7 CEQA; and (2) exceeded or conflicted with the Council's statutory authority, including the  
8 Delta Reform Act and other laws.

9 19. As there is no plain, speedy or adequate remedy in the course of law, a writ is  
10 required to compel the Council to set aside its certification of the PEIR and approval of the  
11 Delta Plan and associated actions.

### 12 **THE PARTIES**

13 20. Petitioner CENTRAL DELTA WATER AGENCY ("CDWA") is a political  
14 subdivision of the State of California created by the California Legislature under the Central  
15 Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix, 117-1.1,  
16 et seq.), by the provisions of which CDWA came into existence in January of 1974. CDWA's  
17 boundaries are specified in Water Code Appendix section 117-9.1 and encompass  
18 approximately 120,000 acres, which are located entirely within both the western portion of San  
19 Joaquin County and the "Sacramento-San Joaquin Delta" as defined in California Water Code  
20 section 12220. While the lands within the agency are primarily devoted to agriculture, said  
21 lands are also devoted to numerous other uses including recreational, wildlife habitat, open  
22 space, residential, commercial, and institutional uses. CDWA is empowered to "sue and be  
23 sued" and to take all reasonable and lawful actions, including to pursue legislative and legal  
24 action, that have for their general purpose either: (1) to protect the water supply of the lands  
25 within the agency against intrusion of ocean salinity; and (2) to assure the lands within the  
26 agency a dependable supply of water of suitable quality sufficient to meet present and future  
27 needs. The agency may also undertake activities to assist landowners and local districts within  
28 the agency in reclamation and flood control matters. (See Wat. Code, Appendix, 117-4.3, subd.



1 (b) & 117-4.1, subs. (a) and (b), respectively.) CDWA may assist landowners, districts, and  
2 water right holders within its boundaries in the protection of vested water rights and may  
3 represent the interests of those parties in water right proceedings and related proceedings before  
4 the SWRCB and the courts of this state and the United States to carry out the purposes of the  
5 agency. (See Wat. Code, Appendix, 117-4.2, subd. (b).) CDWA's special statutory interests,  
6 as well as the interests of the landowners and local districts within its boundaries, will be  
7 directly and indirectly adversely impacted by the Council's unlawful actions.

8         21.     Petitioner SOUTH DELTA WATER AGENCY ("SDWA") is a political  
9 subdivision of the State of California created by the California Legislature under the South  
10 Delta Water Agency Act, chapter 1089 of the statutes of 1973 (Water Code, Appendix, 116-1.1,  
11 et seq.), by the provisions of which SDWA came into existence in January of 1974. SDWA's  
12 boundaries are specified in Water Code Appendix section 116-9.1 and encompass  
13 approximately 148,000 acres which are located entirely within both the south-western portion  
14 of San Joaquin County and the "Sacramento-San Joaquin Delta" as defined in California Water  
15 Code section 12220. While the lands within the agency are primarily devoted to agriculture,  
16 said lands are also devoted to numerous other uses including recreational, wildlife habitat, open  
17 space, residential, commercial, municipal and institutional uses. SDWA is empowered to "sue  
18 and be sued" and to take all reasonable and lawful actions, including to pursue legislative and  
19 legal actions, that have for their general purpose either: (1) to protect the water supply of the  
20 lands within the agency against intrusions of ocean salinity; and/or (2) to assure the lands  
21 within the agency a dependable supply of water of suitable quality sufficient to meet present  
22 and future needs. The agency may also undertake activities to assist landowners and local  
23 districts within the agency in reclamation and flood control matters. (See Wat. Code,  
24 Appendix, 116-4.2, subd. (b) & 116-4.1, subs. (a) and (b), respectively.) SDWA may assist  
25 landowners, districts, and water right holders within its boundaries in the protection of vested  
26 water rights and may represent the interests of those parties in water right proceedings and  
27 related proceedings before the SWRCB and the courts of this state and the United States, to  
28 carry out the purposes of the agency. (See Wat. Code, Appendix, 116-4.2 subd. (b).) SDWA's

1 special statutory interests, as well as the interests of the landowners and local districts within its  
2 boundaries, will be directly and indirectly impacted adversely by the Council’s unlawful  
3 actions.

4 22. Petitioner LOCAL AGENCIES OF THE NORTH DELTA (“LAND”), an  
5 unincorporated association, is a coalition comprised of reclamation, water and levee districts  
6 (“districts”) in an approximately 90,000 acre area of the northern geographic area of the Delta.  
7 Current LAND participants include Reclamation Districts 3, 150, 307, 317, 407, 551, 554, 755,  
8 813, 999, 1002, 2067 and the Brannan-Andrus Levee Maintenance District. Some of these  
9 agencies provide both water delivery and drainage services, while others only provide drainage  
10 services. These districts also assist in the maintenance of the levees that provide flood  
11 protection to Delta communities, homes and farms. LAND member agency interests, as well as  
12 the interests of local landowners within the individual districts, will be directly and indirectly  
13 adversely impacted by the Council’s unlawful actions.

14 23. Petitioner LAFAYETTE RANCH, INC. (“Lafayette”) is a California corporation  
15 and the owner of certain land located on Union Island in the unincorporated areas of San  
16 Joaquin County. Said acreage is within the boundaries of the SDWA and a portion thereof  
17 abuts and diverts water from Middle River, downstream of the point where it separates from  
18 Old River. Lafayette’s interests would be directly and indirectly adversely impacted by the  
19 Council’s unlawful actions.

20 24. Petitioner CINDY CHARLES (“Ms. Charles”) is a resident of the City and  
21 County of San Francisco, and is vitally interested in the health of the San Francisco Bay,  
22 Sacramento-San Joaquin Delta, particularly as related to the health of salmon, steelhead, striped  
23 bass, and other anadromous and non-anadromous fish. Ms. Charles is the Conservation Chair  
24 for the Golden West Women Fly Fishers and is active on conservation issues as Co-Vice  
25 President of the Northern California Council of the Federation of Fly Fishers. Ms. Charles’  
26 interests would be directly and indirectly adversely impacted by the Council’s unlawful actions.

27 25. Agency Petitioners presented comments during the administrative process and  
28 hearings on the matters being challenged in this Petition and Complaint. The Petitioners and

1 their members are directly, adversely and irreparably affected, and will continue to be  
2 prejudiced by the Delta Plan and associated actions, and by the failure of the Delta Stewardship  
3 Council to comply with CEQA and other legal requirements. Such injury will continue until  
4 and unless this Court provides the relief prayed for in this Petition and Complaint.

5 26. Respondent and Defendant CALIFORNIA DELTA STEWARDSHIP COUNCIL  
6 (“Council) is an agency of the State of California.” (Wat. Code, § 85200, subd. (a).) The  
7 Council’s powers include the power to be sued. (Wat. Code, § 85210, subd. (a).)

8 27. Petitioners are currently unaware of the true names and capacities of Does 1  
9 through 100, inclusive, and therefore sue those parties by such fictitious names. Does 1 through  
10 100, inclusive, are agents of the State government who are responsible in some manner for the  
11 conduct described in this Petition, or other persons or entities presently unknown to the  
12 Petitioners who claim some legal or equitable interest in the program that is the subject of this  
13 action. Petitioners will amend this Petition and Complaint to show the true names and  
14 capacities of Does 1 through 100 when such names and capacities become known.

### 15 **JURISDICTION AND VENUE**

16 28. This Court has jurisdiction over this action pursuant to sections 1060, 1085, and  
17 1094.5 of the California Code of Civil Procedure, and sections 21168 and 21168.5 of the Public  
18 Resources Code.

19 29. Venue for this action properly lies in the San Francisco County Superior Court  
20 because the Attorney General, who will be representing the Delta Stewardship Council in this  
21 action, has an office in San Francisco County. (Code Civ. Proc., § 401, subd. (1).) Also,  
22 Petitioner/Plaintiff Cindy Charles is a resident of the City and County of San Francisco, and is  
23 vitally interested in the health of the San Francisco Bay and Sacramento-San Joaquin Delta,  
24 particularly as related to the health of salmon, steelhead, striped bass, and other anadromous  
25 and non-anadromous fish.

26 30. This Petition is timely filed in accordance with Public Resources Code section  
27 21167, subdivision (b) and CEQA Guidelines section 15112.

1 31. Petitioners have complied with Public Resources Code section 21167.5 by  
2 providing written notice of commencement of this action to the Council prior to filing this  
3 Petition and Complaint. A true and correct copy of the notice provided pursuant thereto, with  
4 proof of service thereof, is attached hereto as Exhibit A.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 32. Petitioners have exhausted all administrative remedies by submitting written  
7 comments during several stages of the Delta Plan, the Regulations, and the PEIR. All issues  
8 raised in this Petition were raised to the Council by Petitioners, other members of the public or  
9 public agencies prior to approval of the Delta Plan, Regulations, and certification of the PEIR.

10 33. Petitioners have elected to prepare the record of proceedings in the above-  
11 captioned proceeding pursuant to Public Resources Code, § 21167.6, subdivision (b)(2).

12 34. This Petition is timely filed in accordance with Public Resources Code section  
13 21167 and CEQA Guidelines section 15112.

14 **STANDING**

15 35. Petitioners have standing to assert the claims raised in this Petition because  
16 members of the public agencies, associations, corporations and individuals named as Petitioners  
17 herein have a direct and beneficial interest in the Council's compliance with the Delta Reform  
18 Act, CEQA and other applicable statutes. Petitioners are directly and adversely affected by the  
19 Council's approval of the Delta Plan and Regulations, and by the Council's certification of the  
20 PEIR.

21 **IRREPARABLE HARM**

22 36. As result of the Council's approval of the Delta Plan and Regulations and  
23 certification of the PEIR, Petitioners will suffer great and irreparable environmental harm as  
24 described herein. Petitioners have no adequate remedy at law for this irreparable harm.

25 **PUBLIC BENEFIT**

26 37. This action involves enforcement of important rights affecting the public interest.  
27 Petitioners will confer a substantial benefit to the citizens of the state of California generally as  
28

1 well as the citizens of the Delta, and therefore will be entitled to an award of reasonable  
2 attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure.

### 3 **BACKGROUND FACTS**

4 38. The Delta Reform Act, adopted by the Legislature in 2009, includes substantive  
5 protections for the Delta. The Council, in adopting a Delta Plan, must be consistent with the  
6 substantive protections of the Delta Reform Act and other legal requirements.

7 39. The Legislature declared State policy in pertinent part in the Act as: "The policy  
8 of the State of California is to reduce reliance on the Delta in meeting California's future water  
9 supply needs through a statewide strategy of investing in improved regional supplies,  
10 conservation, and water use efficiency. . . ." (Wat. Code, § 85021.)

11 40. The Delta Plan must further the "coequal goals." (Wat. Code, § 85300, subd. (a).)  
12 "Coequal goals' means the two goals of providing a more reliable water supply for California  
13 and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be  
14 achieved in a manner that protects and enhances the unique cultural, recreational, natural  
15 resource, and agricultural values of the Delta as an evolving place." (Wat. Code, § 85054.)

16 41. Over the course of California's water development history, the Legislature has  
17 enacted measures to protect areas in which water serving other parts of the states originates;  
18 these are known generally as "the Delta Protection Act" and "area of origin" protections. (Wat.  
19 Code, §§ 1215.5, 1216).

20 42. Water Code sections 12200, et seq., commonly referred to as the Delta Protection  
21 Act ("DPA"): (1) require the SWP and CVP to provide salinity control and an adequate water  
22 supply for the Delta (Wat. Code, §§ 12201, 12202); (2) prohibit the export of water from the  
23 Delta to which in-Delta users are entitled through water rights and water which is necessary for  
24 salinity control and an adequate supply "to maintain and expand agriculture, industry, urban  
25 and recreational development in the Delta." (Wat. Code, § 12204); and (3) require maintenance  
26 of a common pool of water in the interior of the Delta and the operation and management of  
27 releases from storage for export to be integrated to the "maximum extent possible" in order to  
28 fulfill the objectives of the Act. The objectives of the DPA are to protect Delta water rights,

1 provide salinity control and additionally provide an adequate supply to “maintain and expand  
2 agriculture, industry, urban, and recreational development in the Delta.”

3 43. The DPA was contemporaneously interpreted by the Department of Water  
4 Resources (“DWR”) in the Preliminary Bulletin 76, December 1960 Report to the Legislature  
5 as providing at page 12: “In 1959 the State Legislature directed that water shall not be diverted  
6 from the Delta for use elsewhere unless adequate supplies for the Delta are first provided.”

7 44. Water Code section 11460 mandates the prior right to watershed water as follows:  
8 “In the construction and operation by the department of any project under the provisions of this  
9 part a watershed or area wherein water originates, or an area immediately adjacent thereto  
10 which can conveniently be supplied with water therefrom, shall not be deprived by the  
11 department directly or indirectly of the prior right to all of the water reasonably required to  
12 adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or  
13 property owners therein.”

14 45. General protections in the Water Code, such as section 1216, ensure that  
15 protected areas are not deprived of adequate supplies of water:

16 A protected area shall not be deprived directly or indirectly of the prior right to all  
17 the water reasonably required to adequately supply the beneficial needs of the  
18 protected area, or any of the inhabitants or property owners therein, by a water  
19 supplier exporting or intending to export water for use outside a protected area  
20 pursuant to applications to appropriate surface water filed, or groundwater  
21 appropriations initiated, after January 1, 1985, that are not subject to Section  
22 11460.

23 46. The Delta Reform Act, adopted in 2009, expressly states that area of origin and  
24 related water rights protections are to remain in place, unimpaired by other provisions of the  
25 Act:

26 This division does not diminish, impair, or otherwise affect in any manner  
27 whatsoever any area of origin, watershed of origin, county of origin, or any other  
28 water rights protections, including, but not limited to, rights to water appropriated  
prior to December 19, 1914, provided under the law. This division does not limit  
or otherwise affect the application of Article 1.7 (commencing with Section 1215)  
of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460,  
11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(Water Code Section 85031, subd. (a).)

1           47.     Despite these specific protections in the Delta Reform Act and other laws, the  
2 Delta Plan fails to adequately protect the Delta and other areas of origin. In particular, the  
3 Delta Plan fails to recognize that water users within the Delta do not have other potential water  
4 supplies besides the Delta. The Delta Plan fails to include necessary measures to ensure that  
5 adequate flows and water quality in the Delta continue to exist after implementation of the  
6 Delta Plan. Moreover, the Delta Plan blindly promotes completion of the BDCP, without  
7 regard to its compatibility with the co-equal goals and the protections for the Delta and other  
8 areas of origin.

9     **Relationship of Delta Plan and BDCP**

10           48.     The Delta Plan encourages construction and operation of new water supply  
11 projects, meaning new conveyance upstream from the Delta to transport water south. The  
12 PEIR, however, does not analyze the environmental impacts of the new conveyance clearly  
13 proposed by BDCP, and obscures and ignores this foundational planning decision to develop a  
14 new conveyance upstream from the Delta, with the capacity to export substantially more water  
15 away from the Sacramento River and the Delta. The new conveyance system (Tunnels) is  
16 proposed as the primary component of the BDCP along with approximately 140,000 acres of  
17 habitat creation to allegedly offset the negative impacts of the proposed new Tunnels and  
18 ongoing operation of the SWP and CVP.

19           49.     Initially proposed in 2007, the current iteration of the BDCP project was  
20 announced by both the Governor and the California Natural Resources Agency (“Resources  
21 Agency”) during the summer of 2012, months prior to the release of the Delta Plan Recirculated  
22 Draft EIR (“RDEIR”). In February 2012, and in early 2013, the Resources Agency released  
23 Administrative Draft chapters of the BDCP, describing the proposed project. According to the  
24 2013 Administrative Draft BDCP and EIR/EIS, the CEQA preferred project would include  
25 three intakes near Clarksburg on the Sacramento River. Each intake would have the capacity to  
26 divert 3,000 cubic feet per second (“cfs”). The 40-foot diameter tunnels would be 35 miles  
27 long, 150 feet under the ground, with a total conveyance capacity of 15,000 cfs (6,000 cfs larger  
28 than the stated design capacity).

1           50.     Water would be transported through the two proposed tunnels to the existing CVP  
2 and SWP facilities near for export south. For perspective on scale, 15,000 cfs is about the  
3 entire average summer flow of the Sacramento River near Clarksburg and well in excess of the  
4 entire flow during dry periods. The Tunnels would reduce the freshwater flows in the  
5 Sacramento River and the sloughs of the Delta, and result in massive adverse physical changes  
6 to the environment, including water quality and quantity in the Delta, Sacramento River, and  
7 area sloughs and including further degradation of critical habitat for imperiled fish, avian and  
8 terrestrial species. Furthermore, approximately 5,000 acres of farmland on the building  
9 pathway for the BDCP’s proposed intakes and Tunnels would be permanently lost. (March  
10 2013 BDCP Admin. Draft EIR/EIS, Chapter 14; see also May 2013 Admin. Draft BDCP,  
11 Chapter 8.)

12           51.     Conversion of previously reclaimed Delta islands to various habitat types  
13 proposed by the BDCP over the next 50 years will substantially alter the character of the Delta  
14 and gravely affect Delta agriculture in particular. According to the March 2013 Administrative  
15 Draft BDCP and BDCP EIR/EIS, over 40,000 acres of Department of Conservation identified  
16 Important Farmland are proposed to be permanently flooded to become tidal marsh under the  
17 Alternative 4 of the BDCP (the preferred project). An additional 39,000 acres of Important  
18 Farmland would be more frequently inundated as part of changes to the operation of the Yolo  
19 Bypass. (March 2013 BDCP Admin. Draft EIR/EIS, Chapter 14; see also May 2013 Admin.  
20 Draft BDCP, Chapter 8.)

21           52.     The Delta Plan RDEIR acknowledges that “Conveyance facilities (pipelines and  
22 pumping plants)” (RDEIR, p. 3-11), “various actions which, if taken, could lead to construction  
23 and/or operation of projects that could provide a more reliable water supply” (RDEIR, p. 2-5)  
24 and, “Surface water projects (water intakes, treatment and conveyance facilities, reservoirs,  
25 hydroelectric facilities)” (RDEIR, p. 2-5). The Council’s CEQA Findings refer throughout to  
26 encouraging “construction and operation of new reliable water supply . . . projects.” (CEQA  
27 Findings, pp. 7, 8, 20, 21, 26, 57, 58.)  
28



1           53.     The Delta Plan declares that improved conveyance will be required to create the  
2 ability to export larger amounts of water from the Delta during wet years. (2013 Delta Plan, p.  
3 113.) The Delta Plan defines the achievement of the coequal goals established by the Delta  
4 Reform Act as including “improved Delta conveyance and operations,” “optimiz[ing]  
5 diversions in wet years when more water is available,” and “decreas[ing] the vulnerability of  
6 Delta water supplies to disruption by natural disasters, such as, earthquakes, floods, and levee  
7 failures.” (2013 Delta Plan, p. 72; see also Regulations, § 5001, subds. (h)(1)(A) and (C).) By  
8 defining the “coequal goals” in terms of these actions, i.e., by development of the BDCP  
9 Tunnels, the Delta Plan and Regulations effectively foreclose maintaining the existing  
10 conveyance capacity and reducing or meeting water demands by alternative means that are  
11 consistent with the Delta Reform Act’s coequal goals.

12           54.     Future “covered actions,” meaning those actions that will occur in whole or in  
13 part in the Delta, will be subject to review for “consistency” with the Delta Plan. (PEIR 3-8, 9.)  
14 Similar actions outside the Delta in areas exporting water from the Delta are, however, not  
15 subject to such review.

16           The Delta Reform Act sets forth a system for the Council’s review of “covered actions”  
17 that meet specified criteria. (Wat. Code, § 8507.5.) According to the Delta Plan:

18                   [T]he Council was granted specific regulatory and appellate  
19 authority over certain actions that take place in whole or in part in  
20 the Delta. To do this, the Delta Plan contains a set of regulatory  
21 policies with which State and local agencies are required to comply.  
22 The Delta Reform Act specifically established a certification process  
23 for compliance with the Delta Plan. This means that State and local  
24 agencies that propose to carry out, approve, or fund a qualifying  
25 action in whole or in part in the Delta, called a “covered action,”  
26 must certify that this covered action is consistent with the Delta Plan  
27 and must file a certificate of consistency with the Council that  
28 includes detailed findings.

(2013 Delta Plan, p. 38.) The vagaries and burdens of Council’s consistency process raise  
numerous concerns with local agencies that will now be required to implement this additional  
review process. Moreover, the relationship between the consistency process, which focuses  
almost entirely on limiting land uses in the Delta, and meeting the Delta Reform Act’s co-equal  
goals is not substantiated.

1 **FIRST CAUSE OF ACTION**

2 **(Delta Plan Is Inconsistent with Delta Reform Act and Other Statutory Authority)**

3 55. Petitioners hereby reallege and incorporate the allegations contained in  
4 paragraphs 1 through 54, inclusive, as if fully set forth herein.

5 56. The Delta Plan as a whole, including the text, definitions, Policies,  
6 Recommendations and Regulations are inconsistent with Delta Reform Act and other applicable  
7 statutes. As a result, adoption of the Delta Plan exceeded the Council’s statutory authority.  
8 Without limiting the scope of the Delta Plan’s defects and inconsistencies, Petitioners allege  
9 specific examples of the statutory inconsistencies in the paragraphs below, which are organized  
10 according to the chapter of the Delta Plan in which they appear.

11 **Delta Plan Chapter 1: Introduction**

12 57. The Delta Plan fails to incorporate best available science as required by Water  
13 Code section 85308, subdivision (a). The Council largely ignored information it was  
14 specifically required to consider, including the Delta Protection Commission’s 2012 Economic  
15 Sustainability Plan, the Department of Fish and Game’s flow criteria and biological objectives  
16 report and the SWRCB’s flow criteria for the Delta. These reports were mandated by the  
17 Legislature to inform the Delta planning process. The results must be discussed and  
18 incorporated into the Delta Plan or the exclusion explained and justified. (Wat Code, §§ 85031,  
19 subd. (d), 85084.5, 85086, subd. (c)(1).)

20 58. The Delta Plan also impermissibly relied on an interim and outdated  
21 recommendation of the Ocean Protection Council to justify its requirement of flood protection  
22 of 55 inches of sea level rise by 2100. (2013 Delta Plan, Table 1-1, pp. 23, 80, 192.) The June  
23 2011 and earlier guidance documents were interim documents only, and will be updated with  
24 values for sea level rise from the 2012 National Research Council report. According to an  
25 update released by the Ocean Protection Council March 2013, sea level rise at San Francisco  
26 from Table 5.2 for the NRC report indicates that the highest possible level of sea level rise as  
27 35.8 – 36.7 inches +/- 9.8 inches by 2100, not 55 inches. While the Delta Reform Act requires  
28 the BDCP to include a comprehensive review and analysis of numerous factors, including

1 “possible sea level rise up to 55 inches” (Wat. Code, § 85320, subd. (b)(2)(C)), the Delta Plan  
2 incorporates the 55-inch figure without comprehensive review or analysis. As a result, massive  
3 levees will have to be built at great expense to meet this unsupported standard well in advance  
4 of sea levels actually rising.

5 **Delta Plan Chapter 2: The Delta Plan**

6 **Consistency Requirements**

7 59. The Legislature provided the Council with direct regulatory authority over  
8 consistency of covered actions with the Delta Plan. (Wat. Code, §§ 85225-85225.30.)

9 60. General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan  
10 (G P1; Regulations, § 5002), however, fails to provide clear direction to other government  
11 entities regarding what constitutes covered action; it is therefore inconsistent with and does not  
12 establish a governance structure to direct efforts across state agencies. (Wat. Code, § 85001,  
13 subd. (c).)

14 61. The Adaptive Management Approach described in the Delta Plan (2013, Delta  
15 Plan, Appendix A) does not include “a science-based, transparent, and formal adaptive  
16 management strategy for ongoing ecosystem restoration and water management decisions.”  
17 (Wat. Code, § 85308, subd. (f).) Specifically, the proposed process merely recommends, but  
18 does not require, opportunities for public participation and outside scientific review. (2013  
19 Delta Plan, Appendix A, Table A-1 p.A-2.)

20 62. The potential for conflicts of interest by the Council’s Independent scientists are  
21 also not properly accounted for in the Adaptive Management Appendix. In particular, none of  
22 the criteria identify potential financial conflicts of interest, such as grant funding from a  
23 particular agency with a proposed project or foundation grant with a stake in the outcome.  
24 (2013 Delta Plan, Appendix A, Table A-1, p. A-3.) For the credibility of the scientific process,  
25 all potential conflicts must be publicly disclosed prior to selection of a peer review panel.

26 63. The Council also failed to adequately define key terms, resulting in legally  
27 unsupportable definitions that will impair implementation and cause confusion.  
28

1           64.     The Council has failed to develop the Delta Plan consistent with the federal  
2 Coastal Zone Management Act of 1972 (16 U.S.C., §§ 1451, et seq.) or an equivalent thereof as  
3 required by Water Code Section 85300, subdivision (d) (1). Inconsistencies include: (1) the  
4 failure to include unified policies, criteria, standards, methods, and processes for dealing with  
5 those land uses and water uses on lands south of the Delta which drain into the San Francisco  
6 Bay / Sacramento-San Joaquin Delta Estuary and those land uses and water uses on lands south  
7 of the Delta, which use water exported from the San Francisco Bay / Sacramento-San Joaquin  
8 Delta Estuary; and (2) the failure to set forth an enforceable policy with a mechanism to ensure  
9 that all State agencies comply. Compliance is particularly significant in view of the repeated  
10 violations by the SWP and CVP of the Water Quality Objectives and Standards for the San  
11 Francisco Bay / Sacramento-San Joaquin Delta Estuary included in SWRCB Decision D-1641.

12 **Delta Plan Chapter 3: A More Reliable Water Supply for California**

13           65.     In order to define “reliable water supply,” the Council needed to first produce a  
14 water availability analysis to determine the amounts of water available for beneficial uses.  
15 Thereafter, the Council needed to allocate that existing supply according to legal mandates and  
16 water right priorities. By failing to undertake these necessary steps, the Council created a Delta  
17 Plan that is inconsistent with the protections and priorities afforded to the Delta and other areas  
18 of origin. According to the Delta Plan, “a more reliable water supply for California” will be  
19 achieved when: “Water exported from the Delta will more closely match water supplies  
20 available to be exported, based on water year type and consistent with the coequal goal of  
21 protecting, restoring, and enhancing the Delta ecosystem.” (2013 Delta Plan, p. 72, see also  
22 Regulations, § 5001, subd. (h)(1)(B).)

23           66.     According to Delta Protection Act and other area of origin protections, however,  
24 water exported from the Delta is limited to water supplies legally available for export from the  
25 Delta. (See Wat. Code, §§ 11460 et seq. and 11128 (Watershed of Origin Statutes – Wat. Code,  
26 §§ 1216, 11460 et seq.) and Wat. Code, §§ 10505 et seq. (County of Origin Statutes – Wat.  
27 Code, §§ 10505 et seq.), Wat. Code, § § 1215.5, 1216 (Area of Origin Protections applicable to  
28 the Delta – Wat. Code, §§ 1215.5, 1216), Wat. Code, §§ 12200 et seq. (Delta Protection Act).)

1 Exports by the SWP and CVP must therefore be limited to water, which is truly surplus to the  
2 present and future needs of the Delta and other areas of origin, and defining achievement of a  
3 more reliable water supply without reference to these provisions is inconsistent with existing  
4 statutory authority. The “more closely match” objective does not provide the protections  
5 required by law. The reduced reliance measures unlawfully treat water use in the export areas  
6 as having an equal priority to water use in the Delta.

7 67. In addition, this definition does not specify the meaning of “water supplies  
8 available to be exported” or “based on water year type” and is therefore inconsistent with Water  
9 Code section 85308, subdivisions (b-d), which requires the Delta Plan to include quantified and  
10 measurable targets associated with achieving objectives of the Plan so that progress toward  
11 meeting the targets can be determined.

12 68. The Delta Plan also refers to “improving conveyance” as a means to provide a  
13 more reliable water supply for California. (2013 Delta Plan, p. 72; see also Regulations, §  
14 5001, subd. (h)(1)(C).) Water Code section 85020, subdivision (f), however, refers to  
15 “improv[ing] the water conveyance system.” The Delta Plan fails to refer to a “conveyance  
16 system” and simply assumes that more conveyance capacity is the only means to provide a  
17 more reliable water supply. **In fact, less conveyance capacity for export, rather than more,**  
18 **is likely required to assure a more reliable water supply for the Delta and other areas of**  
19 **origin.** Levee and channel improvements, improved fish screening at the existing SWP and  
20 CVP intakes, and improvements of the existing Delta Cross Channel are all conveyance system  
21 improvements consistent with law that do not necessarily result in increased conveyance  
22 capacity.

23 69. The Delta Reform Act required the Delta Plan to “promote options for new and  
24 improved infrastructure relating to the water conveyance in the Delta, storage systems, and for  
25 the operation of both to achieve the coequal goals.” (Wat. Code, § 85304.) Simply “improving  
26 conveyance” ostensibly through the BDCP (see Water Reliability Recommendation 12 (WR  
27 R12)) assumes that BDCP is the only option and does not promote any other options, as  
28 required by Water Code section 85304.

1           70.     The definition of reliable water supply provided in the Delta Plan is also  
2 inconsistent with the policy of the Delta Reform Act that refers to the coequal goals including  
3 “a reliable water supply for California.” (See, e.g., Wat. Code, § 85054.) A reliable water  
4 supply for the Delta is necessarily part of a reliable water supply for California, yet the Delta  
5 Plan does not include any metrics for a reliable water supply in the Delta itself. In addition to  
6 domestic and commercial uses, a reliable water supply is critical to protecting and enhancing  
7 agriculture as required by the Delta Reform Act. As shown by the 2012 and 2013  
8 Administrative Draft BDCP EIR/EIS, completion of the BDCP (WR R12), would cause  
9 significant adverse water quality, surface water and water supply impacts in the Delta and  
10 therefore interfere with achievement of a reliable water supply for the Delta. (March 2013  
11 BDCP Admin. Draft EIR/EIS.)

12           71.     Water Resources Policy 1: Reduce Reliance on Delta through Improved  
13 Efficiency (WR P1), is inconsistent with the Delta Reform Act, as well as the Delta Protection  
14 Act and other area of origin protections. WR P1 prohibits water from being “exported from,  
15 transferred through, [and] used in the Delta” by a covered action unless certain actions have  
16 been taken to “reduced reliance on the Delta and improved regional self-reliance. . . .” (2013  
17 Delta Plan, p. 110; see also Regulations, § 5003.) According to WR R1, water may not be used  
18 in the Delta if the user: (1) has not contributed to reduced reliance on the Delta; (2) that failure  
19 to reduce reliance on the Delta results in a need to use water; and (3) the use has a significant  
20 environmental impact. Water use in the Delta is restricted in the same manner as use of water  
21 that is exported from the Delta. Many of the water users in the Delta hold riparian, Pre-1914, or  
22 senior Post-1914 appropriative rights, and all are given priority through the Delta Protection  
23 Act (Wat. Code, §§ 12200 et seq.) and other area of origin protection statutes. These holders  
24 are not required to reduce water diversions until other more junior water users reduce their  
25 diversions. Thus, this provision directly conflicts with existing California law and is  
26 inconsistent with the system of water rights priorities, which is within the jurisdiction of the  
27 SWRCB.  
28

1           72. According to statute, the Delta Reform Act cannot impair area of origin,  
2 watershed of origin, county of origin, Delta Protection Act and other water right and water  
3 supply protections. (Wat. Code, § 85031, subd. (a).) Yet, a requirement that water users within  
4 the Delta watershed reduce their reliance on the very watershed within which they are located  
5 ignores both the priorities afforded the Delta as an area of origin (Wat. Code, §§ 11460 et seq.,  
6 11128, 1215.5, 1216) and the special protections afforded the Delta in the Delta Protection Act,  
7 which was enacted at the time the SWP was authorized (Wat. Code, §§ 12200 et seq.).

8           73. WR R1, subdivision (e)(1) creates a presumption of reduced diversion when an  
9 agency has prepared a plan under Water Code Division 6, Parts 2.55, 2.6, and 2.8. However,  
10 many medium and small water agencies are exempted from the need to prepare such a plan.  
11 For instance, under Water Code section 10853 suppliers for agencies serving less than 25,000  
12 acres are exempted from preparing the water management plans unless funding is available.  
13 The Delta Plan’s failure to properly incorporate these exemptions into WR R1 appears to  
14 conflict with the various statutes providing such exemptions and undermines the purposes for  
15 which these exemptions were created. (See, e.g., Wat. Code Division 6, Parts 2.55, 2.6, and  
16 2.8.)

17           74. Finally, in-Delta landowners cannot “diversify local water supply portfolios” as  
18 they are area-of origin watershed water users, and have no other sources of water. WR R1 as a  
19 whole conflicts with Water Code Section 85031, subdivision (d) regarding the SWRCB’s  
20 authority, which states:

21                   Unless otherwise expressly provided, nothing in this division  
22                   supersedes, reduces, or otherwise affects existing legal protections,  
23                   both procedural and substantive, relating to the state board’s  
24                   regulation of diversion and use of water, including, but not limited  
25                   to, water right priorities, the protection provided to municipal  
26                   interests by Sections 106 and 106.5, and changes in water rights.  
27                   Nothing in this division expands or otherwise alters the board’s  
28                   existing authority to regulate the diversion and use of water or the  
                    courts’ existing concurrent jurisdiction over California water rights.

26           75. To further water supply reliability, the Council urged completion of the BDCP in  
27 Water Reliability Recommendation 12: Complete Bay Delta Conservation Plan (WR R12).  
28 (2013 Delta Plan, pp. xx, 114.) This recommendation fails to implement “Delta as a Place”

1 protections and other mandates of the Delta Reform Act, and specifically the requirement to  
2 “promote options for new and improved infrastructure relating to the water conveyance in the  
3 Delta, storage systems, and for the operation of both to achieve the coequal goals.” (Wat.  
4 Code, § 85304.)

5 76. WR R12 makes no reference to the coequal goals and promotes the BDCP  
6 irrespective of whether it advances or is consistent with those goals. As made clear in the 2012  
7 and 2013 Administrative Draft EIR/EIS provided to the Council as a responsible agency under  
8 CEQA,<sup>2</sup> the proposed BDCP project interferes substantially with meeting the coequal goals.  
9 For example, the BDCP would result in significant and unavoidable adverse impacts in virtually  
10 every resource area, including water quality, water supply, and agricultural resources. With  
11 respect to biological resources, the Administrative Draft BDCP EIR/EIS indicates that out of  
12 217 identified impacts on aquatic species resulting from implementing the preferred Alternative  
13 4, only two of those impacts would be beneficial. (March 2013 BDCP Admin. Draft, Chapters  
14 11-12.)

15 77. In addition to construction of the massive water diversions on prime farmland,  
16 estimated to convert about 5,000 acres of farmland in the Delta, the BDCP also includes  
17 approximately 140,000 acres of habitat “restoration” in the Delta. Such habitat restoration  
18 requires permanent conversion of approximately 40,000 acres of state-designated Important  
19 Farmland to tidal marsh and the placement of cropping restrictions on an additional 39,500  
20 acres, as well as increased frequency and duration of flooding over 17,900 acres of Important  
21 Farmland in the Delta. (2013 BDCP Administrative Draft EIR/EIS, Chapter 14, Agricultural  
22 Resources.) Conversion of such a large percentage of farmland in the Delta, most of which is  
23 in private ownership, is directly inconsistent with the policy of protecting and enhancing the  
24 Delta’s agricultural values, as required by Water Code section 85054. Moreover, modeled  
25 increases in salinity from BDCP indicate that while water quality for exporters would improve  
26 dramatically, increases in salinity in the Delta would result in significant and unavoidable

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27  
28 <sup>2</sup> The Council received these draft documents pursuant to its role as a responsible agency  
under CEQA for the BDCP. (See, e.g., Wat. Code, § 85320, subd. (c); see also CEQA  
Guidelines, § 15096.)



1 adverse impacts. (March 2013 BDCP Admin. Draft EIR/EIS, p. 8-426.) Implementation of the  
2 BDCP would also violate existing water quality standards designed to protect beneficial uses of  
3 water by agriculture. (*Id.* at Appendix 8H.)

4 78. As demonstrated in the 2012 and 2013 BDCP Administrative Draft and  
5 accompanying EIR/EISs, the BDCP would also result in numerous adverse biological impacts.  
6 Agency comments on the BDCP Effects Analysis, which was also provided to the Council,  
7 indicate that serious questions exist about the ability of the BDCP to meet the goal of  
8 “protecting, restoring, and enhancing the Delta ecosystem.” (Wat. Code, § 85054.) Such  
9 effects include, but are not limited to: adversely affecting designated critical habitat for listed  
10 endangered fish species, including winter-run and spring-run Chinook salmon, as well as  
11 reducing flows and degrading water quality in the lower Sacramento River, sloughs, and the  
12 Delta.

13 79. In response to calls for the Council to use its authority to require, or at least  
14 encourage, the BDCP to be formulated in a manner that meets the coequal goals, the Council  
15 claimed that it has no ability to meaningfully influence the form of conveyance included in the  
16 BDCP. Specifically, the Council pointed to the fact that the BDCP will be incorporated into the  
17 Delta Plan if specific criteria outside of the Council’s control are met. (2013 Delta Plan,  
18 Appendix G.) Such is inconsistent with the Delta Stewardship Council’s role regarding  
19 conveyance as set forth in Water Code, §§ 85304, 85320, subdivision (e). Without substantive  
20 support, the Delta Plan concluded that “the agencies pursuing the BDCP are best positioned to  
21 develop possible options, evaluate them, and decide on the best one.” (2013 Delta Plan,  
22 Appendix G: The Delta Stewardship Council’s Role Regarding Conveyance, p. G-3.) Yet,  
23 without direction from the Council, it is clear that the BDCP will not meet the coequal goals.

24 80. The Delta Plan assumed that BDCP would necessarily be incorporated into the  
25 Delta Plan and there would not be any other proposals for conveyance besides BDCP, and  
26 therefore concluded that “it would be wasteful now to include in the Delta Plan regulatory  
27 policies prescribing/limiting conveyance.” (2013 Delta Plan, Appendix G, p. G-1.) The  
28

1 Council thereby impermissibly ignored its authority with respect to attainment of the coequal  
2 goals to determine whether the BDCP will in fact be incorporated into the Delta Plan.

3 81. According to Water Code section 85320, subdivision (b), the BDCP must meet  
4 several criteria, including compliance with Fish and Game Code take provisions and CEQA  
5 (with specific directions) prior to being incorporated into the Delta Plan. In particular, the  
6 BDCP EIR must include “comprehensive review and analysis” of: flow, conveyance, climate  
7 change, effects on fish, flood management, natural disasters, and Delta water quality. (Water  
8 Code, § 85320, subds. (b)(2)(A)-(G).) Additionally, under Water Code section 85321: “The  
9 BDCP shall include a transparent, real-time operational decision-making process in which  
10 fishery agencies ensure that applicable biological performance measures are achieved in a  
11 timely manner with respect to water system operations.” The Council will thus be in a position  
12 to review the consistency of the BDCP with the applicable statutory requirements. Yet, the  
13 Council failed to include policies or recommendations to implement the specific considerations  
14 required by the Delta Reform Act.

15 82. The Council’s failure to address conveyance is also inconsistent with the statutory  
16 directive to “promote options for new and improved infrastructure relating to the water  
17 conveyance in the Delta . . . .” (Wat. Code, § 85304.) Instead of following the statutory  
18 mandate, the Council simply “recommended” that the BDCP be completed – whatever it may  
19 be and irrespective of the BDCP’s consistency with the coequal goals.

20 83. The Council’s avoidance of substantive analysis of BDCP conveyance and  
21 conveyance in general differs from its approach to habitat creation, which is also a major  
22 component of the BDCP. While the Council adopted no binding policies for conveyance  
23 (whether associated with BDCP or not) and simply recommended that the BDCP be completed  
24 (WR R12), it adopted four policies that would apply to habitat restoration components of the  
25 BDCP, as well as nine recommendations. (2013 Delta Plan, pp. xx-xxvi.) This inconsistency  
26 reveals the Council’s bias in promoting BDCP conveyance irrespective of what the BDCP  
27 conveyance component actually consisted of and whether or not BDCP would meet the coequal  
28 goals.

1 84. By uncritically promoting the BDCP, irrespective of its content, the Council  
2 ignored statutory mandates. Moreover, it was unreasonable for the Council to “assume” that  
3 the BDCP would be completed and incorporated into the Delta Plan and that no other proposals  
4 for conveyance would be made.

5 **Delta Plan Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem**

6 85. The Delta Reform Act required the SWRCB, “[f]or the purpose of informing  
7 decisions on the Delta Plan and the [BDCP]” to “develop flow criteria for the Delta ecosystem  
8 necessary to protect public trust resources. . . . The flow criteria for the Delta ecosystem shall  
9 include the volume, quality, and timing of water necessary for the Delta ecosystem under  
10 different conditions. . . .” (Wat. Code, § 85086, subd. (c)(1).)

11 86. The SWRCB submitted the flow criteria report to the Council in August 2010.  
12 The Council, however, did not use the information in the flow report to inform its planning  
13 decisions for the Delta Plan. The Council violated the Delta Reform Act by failing to use the  
14 flow report to inform its planning decisions.

15 87. The Council also acted prematurely by adopting the Delta Plan and Regulations  
16 prior to the development of flow and water quality objectives to address all beneficial uses,  
17 including public trust resources in the Delta and upstream tributaries.

18 88. Under Ecosystem Restoration Policy 1: Update Delta Flow Objectives (ER P1),  
19 the SWRCB’s flow objectives “shall be used to determine consistency with the Delta Plan.”  
20 (2013 Delta Plan, p. xxiv.)

21 89. ER P1 fails to comport with Water Code section 85031, subdivision (a)  
22 requirements regarding the continued applicability of area of origin, watershed of origin, county  
23 of origin, Delta Protection Act, and other water rights protections. (See, e.g., Wat. Code, §§  
24 1215.5, 1216, 11128, 11460 et seq., 10505 et seq., 12200 et seq.) Without the updated SWRCB  
25 flow objectives taking into account all beneficial uses, the Delta Plan does not adequately  
26 assure that areas of origin are protected.

27 90. Policy ER P1 also fails to implement the CVP obligation to double the natural  
28 production of anadromous fish. (CVPIA, Pub. L. 102-575, 106 Stat. 4600, Title 34, 106 Stat.

1 4706-31 (1992), § 3406, subd. (b)(2).) The CVPIA requires the Secretary of Interior to develop  
2 a program to ensure by the year 2002 natural production of anadromous fish on a long-term  
3 basis, at levels not less than twice the average levels attained during the period of 1967-1991.  
4 Anadromous fish include: salmon, steelhead, striped bass, sturgeon and American shad. (*Ibid.*,  
5 § 3406, subd. (b)(1).) Adequate flows and water quality for fish are essential to that obligation,  
6 which should have been included in ER P1.

7 91. Water Code section 85300, subd. (d)(1)(B) requires consistency with section 8 of  
8 the Federal Reclamation Act of 1902. Title 34 of Public Law 102-575, section 3408,  
9 subdivision (g) confirms that it amends and supplements the 1902 Act. The State and the  
10 United States, through the November 24, 1986 Agreement for Coordinated Operations of the  
11 CVP and the SWP, agreed to the following: “United States and the State each plans to meet all  
12 requirements and objectives of its project and to coordinate the operation of their projects so as  
13 not to adversely affect the rights of other parties and to conserve water.” (See explanatory  
14 recitals, Article 2, p. 3.) The actions of the Council constitute State interference with efforts of  
15 the United States to meet the Congressionally mandated objectives as set forth in the CVPIA  
16 and are therefore inconsistent with the contractual obligations of the State.

17 92. Under Ecosystem Restoration Policy 2: Restore Habitats at Appropriate  
18 Elevations (ER P2) habitat restoration should occur within the areas shown on maps prepared  
19 by the Department of Fish and Wildlife in 2011. (2013 Delta Plan, p. xxii.)

20 93. Encouraging habitat restoration in these areas, many of which are highly  
21 productive farmlands, is inconsistent with “Delta as a Place” protections in the Delta Reform  
22 Act. Specifically, ER P2 conflicts with Water Code section 85020, subdivision (b), which  
23 requires the protection and enhancement of the unique cultural, recreational and agricultural  
24 values of the California Delta as an evolving place, and Water Code section 85054. This is true  
25 both with respect to protecting, restoring and enhancing the Delta ecosystem (of which the  
26 levee-protected lands are a part) and the requirement to protect and enhance the unique cultural,  
27 recreational, natural resource, and agricultural values of the Delta as an evolving place. As  
28 explained above, interference with the reclamation of the Swamp and Overflowed lands would

1 violate the obligation of the State resulting from the grant of said lands from the United States.  
2 ER P2 also conflicts with local agency efforts and plans to protect agricultural lands.

3 94. Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat (ER  
4 P3) specifies that “[w]ithin the priority habitat restoration areas depicted in [a California  
5 Department of Fish and Wildlife (“DFW”) 2011 habitat priority map] significant adverse  
6 impacts to the opportunity to restore habitat must be avoided or mitigated.” (2013 Delta Plan,  
7 p. xxiii.) ER P3 is an unlawful attempt to regulate in contravention of statutory authority  
8 granted to the Council. (Cal. Const. Art. I, § 19, U.S. Const. Art. 5.)

9 95. The Council’s identification of areas for extraordinary regulation under both  
10 “Covered Action” requirements for the purpose of facilitating possible future acquisition for  
11 water export conveyance facilities and/or habitat to mitigate for the adverse impacts caused by  
12 exports of water from the Delta is contrary to the State and Federal constitution and the state  
13 eminent domain statutes. ER P3’s identification of areas for extraordinary regulation and future  
14 acquisition will depress land values in advance of and in preparation for government taking of  
15 those lands through eminent domain.

16 96. ER P3 also requires mitigation to occur for an event (restoration), which itself has  
17 not yet, and may never, occur. The process for determining when and under what  
18 circumstances an “opportunity” for habitat restoration on any individual parcel of land in the  
19 Delta would become available is undetermined. Moreover, the Council has no legal authority,  
20 in consultation with DFW or otherwise, to dictate mitigation requirements for landowners in  
21 connection with their uses of their properties simply because there “may be” an “opportunity”  
22 for future habitat restoration.

23 97. Areas within the map referenced in ER P3 include agricultural lands. Eventual  
24 conversion of these lands to habitat violates Water Code sections 85020, subdivision (b),  
25 85054, 12981, 11460 et seq., 12200 et seq., other provisions of law, and the obligations to  
26 reclaim Swamp and Overflowed lands.

27 98. ER P3 fails to ensure that ecosystem restoration be conducted in a manner that  
28 enhances existing agriculture and communities in the Delta. The documented failures of many

1 restoration projects to meet biological goals and objectives make it clear that these projects  
2 should be completed on public lands first, demonstrate that they have beneficial effects, and  
3 then phased in strategically to achieve the greatest possible beneficial effect with the smallest  
4 possible adverse impact on existing uses. The participation of willing landowners in habitat  
5 projects is critical to the success of this proposal on any scale. Equally important, any burdens  
6 caused by creation of habitat should be borne by the habitat projects, not neighboring  
7 landowners, consistent with the Delta Protection Commission’s 2010 Land Use and Resource  
8 Management Plan (“LURMP”). (See, e.g., LURMP, Land Use Policy P-3.)

9 99. According to Ecosystem Restoration Policy 4: Expand Floodplains and Riparian  
10 Habitats in Levee Projects (ER P4), “Levee projects must evaluate and where feasible  
11 incorporate alternatives, including the use of setback levees, to increase floodplains and riparian  
12 habitats.” (2013 Delta Plan, p. xxiii; see also Regulations, § 5010.) Setting back levees in the  
13 Delta involves placement of the new levee at a different location, requiring significant volumes  
14 of fill soils, that must be brought in from distant locations, to construct a new levee. The  
15 environmental impacts of these excavation and fill projects can often outweigh any perceived  
16 biological benefits. Moreover, the ER P4 evaluation requirement applies to proposed actions to  
17 “construct new levees or substantially rehabilitate or reconstruct existing levees” regardless of  
18 their size, location or applicant financial ability. The primary purpose and most important  
19 function of levee improvement projects is to reduce the risk of flooding to parcels protected by  
20 the levees. Yet, according to the language in ER P4, the purpose of this regulation is “to  
21 increase floodplains and riparian habitats,” both of which are public purposes and would  
22 ostensibly benefit the general public.

23 100. ER P4 is too broad and imposes additional mandated costs on the wrong  
24 individuals or entities for implementation, is inconsistent with statutory law adopted under the  
25 Delta Reform Act, cannot be indefinitely applied due to limitations on land suitable and  
26 available for the stated public purposes (expanded floodplain and riparian habitats), fails to  
27 properly define specific entities or individuals to which the requirement applies, fails to analyze  
28 the financial ability of targeted entities to pay for this costly requirement, and ignores

1 Proposition 218 constitutional prohibitions forbidding collection of assessments by public  
2 agencies to be used for general benefits not specific to parcels paying the assessment.

3 101. While the Council ultimately limited the application of this ER P4 somewhat by  
4 excluding certain sloughs within the Delta from the feasibility analysis requirement, the costs of  
5 carrying out these assessments, let alone actually constructing setback levees, is enormous and  
6 not justified by the potential benefits. According to the Cost Analysis for Proposed Delta Plan  
7 Regulations in Support of the Economic and Fiscal Impact Statement (“Cost Analysis”), levee  
8 project costs would increase by \$300,000 per mile of levee.” (Cost Analysis, Appendix A, p.  
9 A-1 see also Table 3, page 28, superscript “e”.) The Cost Analysis concludes that the “cost of  
10 setback levees could therefore be two to eight times the cost to improve an existing levee in  
11 place.” (Cost Analysis, Appendix A, p. A-2.) Thus, by the Plan’s own analysis, the cost per  
12 mile of levee would go from as low as \$4 million per mile to as much as \$68 million per mile,  
13 with additional habitat measures raising the cost to \$136 million per mile, an increased cost of  
14 3,400 percent. The Cost Analysis admits “only a portion of Delta levees located beyond the  
15 jurisdiction of the CVFPP and Suisun Marsh Preservation Plan are rural levees appropriate for  
16 setback consideration,” yet this regulation requires all levee improvement projects to evaluate  
17 whether such a levee is even feasible. (Cost Analysis, p. 27.)

18 102. ER P4 also fails to recognize that floodplain restoration is most effective where  
19 the topography supports it. Where the channels are maintained by tidal energy, as in much of  
20 the Delta, traditional floodplain restoration techniques can be ineffective or lead to unforeseen  
21 ecological impacts. The majority of Delta levees are located on the historic high topography  
22 along river banks, created by overbank deposits. The natural topography was a series of  
23 meandering benches and expanses of mixed uplands and wetlands behind these natural levees  
24 in the central and south Delta. The floodplains were not necessarily the leveed areas, but  
25 instead were the areas behind the natural topographic high points.

26 103. The Delta Plan’s broad based directive to study the potential for setback levees  
27 throughout the Delta in ER P4 is inconsistent with the approach of the Central Valley Flood  
28 Protection Plan (“CVFPP”) adopted pursuant to Senate Bill 5 in 2008. (Wat. Code, §§ 9300 et

1 seq.) The CVFPP explains that “[a]t selected levee setback locations in Sacramento and San  
2 Joaquin river basins,” setback levees should be “consider[ed],” “may be used . . . where  
3 economically feasible,” and “where setback levees for multiple benefits prove feasible.”

4 104. Proposition 218 establishes limitations on the levy of assessments as follows: (a)  
5 assessments may only be imposed upon parcels which receive a special benefit beyond the  
6 general benefits conferred on property within a special district as a result of the public  
7 improvement or service; (b) the charge to each parcel may not exceed the reasonable cost of the  
8 proportional special benefit conferred on that parcel; and (c) the special district must allocate  
9 costs between special and general benefits, and cannot use assessments to recover the  
10 proportionate cost attributable to the general benefit. (Art. XIII D, § 4, subd. (a).) Under ER  
11 P4, “incorporation of alternatives, including the use of setback levees” to expand floodplains  
12 and riparian habitats “where feasible,” are broad benefits to the public and, therefore, the costs  
13 associated with providing them cannot be borne by property owners who pay assessments for  
14 the maintenance and improvements of these levees. Proposition 218 only permits assessments  
15 to be based on the special benefit each parcel receives. The public benefits of expanded  
16 floodplains and riparian habitats called for in this section, i.e., benefits that accrue to others  
17 outside the assessment area, are beyond the scope of allowed assessments under Proposition  
18 218.

19 105. It is also unlawful for property owners within the Delta to be assessed to create  
20 riparian habitat that could be claimed as ecosystem restoration credits for habitat acres required  
21 of other entities such as DWR, the United States Bureau of Reclamation (“USBR”) or their  
22 water contractors. A portion of the habitat acres is required by the federal Biological Opinions  
23 to mitigate for jeopardy caused to listed species for continued operation of water export  
24 facilities in the south Delta under Endangered Species Act (16 U.S.C., §§ 1531 et seq.) and the  
25 California Endangered Species Act (Fish & Game Code, §§ 2050 et seq.). Additional habitat  
26 credits are proposed under the Habitat Conservation Plan (“HCP”) that the water contractors are  
27 promoting – the BDCP.  
28



1 **Delta Plan Chapter 5: Protect and Enhance the Unique Cultural, Recreational, Natural**  
2 **Resource, and Agricultural Values of the California Delta as an Evolving Place**

3 106. The Delta Protection Commission’s Economic Sustainability Plan included  
4 important and well-substantiated recommendations for carrying out the statutory policy to  
5 “protect and enhance the unique cultural, recreational, and agricultural values of the Delta as an  
6 evolving place.” (Wat. Code, § 85020, subd. (b).) The findings and recommendations of the  
7 Economic Sustainability Plan, however, were not properly considered by the Council. (Wat.  
8 Code, § 85301.)

9 107. Maintaining Delta Agriculture is allegedly a core policy of the Delta Plan. (2013  
10 Delta Plan, p. 185.) The Delta Plan, however, erroneously uses the term “sustain” for the Delta  
11 economy when the statutes mandate “protect and enhance the unique cultural, recreational and  
12 agricultural values. . . .” (Wat. Code, §§ 85020, subd. (b), 85054.) “Sustaining” is not the same  
13 as “enhancing.” Including agriculture as only a factor, without recognition of its relative  
14 importance, is contrary to the findings of the 2012 Economic Sustainability Plan of the Delta  
15 Protection Commission, which determined that agriculture was the primary driver of the present  
16 and future economy of the Delta. (See, e.g., Economic Sustainability Plan, pp. 30-33, 112-  
17 113.) The Delta Plan therefore conflicts with the Delta Reform Act. (Wat. Code, §§ 85020,  
18 subd. (b), 85054.)

19 108. The Delta Plan also wrongly applies the word “unique” as a limitation on  
20 protection and enhancement rather than a recognition of the uniqueness of the Delta as  
21 requiring protection and enhancement of all its resources. This approach conflicts with Water  
22 Code sections 85020, subdivision (b) and 85054, both of which refer to “protect[ing] and  
23 enhance[ing] the unique cultural, recreational, and agricultural values of the California Delta as  
24 an evolving place. (See also, Wat. Code, §§ 12981, 12201.)

25 109. With respect to recreation, the Delta Plan incorrectly converted the statutory  
26 requirement to “protect and enhance the unique cultural, recreational, and agricultural values. . .  
27 .” (Wat. Code, §§ 85020, subd. (b), 85054) to “encourage recreation and tourism.” This  
28 approach is inconsistent with the Delta Reform Act.

1           110. The Delta Plan also impermissibly focuses on land use as a means to meet the  
2 coequal goal of “protecting, restoring, and enhancing the Delta ecosystem.” (Wat. Code, §  
3 85054.) The Delta Plan recognizes that land use development in the Delta is already very  
4 constrained at both the local and state planning levels, and that habitat loss is just one of many  
5 stressors on the ecosystem. According to the Delta Plan, such threats include: altered flows,  
6 habitat loss, entrainment in Delta diversions, degraded water quality, harmful nonnative  
7 species, migration barriers, and impacts from hatcheries.” (2013 Delta Plan, p. 136.) The Delta  
8 Plan also fails to comparably address land use in the areas receiving water from the projects  
9 exporting water from the Delta, since the water extracted and portions of the facilities for the  
10 delivery of such water are located in the Delta. (Wat. Code, § 85057.5.)

11           111. Delta Protection Policy 1: Locate New Urban Development Wisely (DP P1)  
12 specifies that new residential, commercial, and industrial development is limited to certain  
13 areas, generally including existing spheres of influence, community plans and towns. DP P1  
14 conflicts with local land use authority and planning, which already thoroughly regulates these  
15 land uses. (See, e.g., Gov. Code, §§ 65100, et seq.)

16           112. DP P1 conflicts with several provisions of the Delta Reform Act “Delta as a  
17 Place” protections, including: (1) Water Code section 85022, subdivision (c)(4), which states  
18 that future developments that are carefully planned and consistent with the policies of that  
19 division are “essential” to the economic and social well-being, particularly to persons living and  
20 working in the Delta; (2) Water Code section 85212, which states what the Council’s input is  
21 required to include, but it does not concede or transfer any powers to regulate land use  
22 development from the local government to the Council, (3) Water Code section 85300,  
23 subdivision (a), which states that the Delta Plan shall include subgoals and strategies “to assist  
24 in guiding state and local agency actions” related to the Delta; (4) Water Code section 85305,  
25 subdivision (a), which states that the Delta Plan shall reduce risks to people, property, and state  
26 interests in the delta by “promoting” “appropriate land uses,” but not granting any authority to  
27 the Council or the Delta Plan to “regulate” development or land uses (see Wat. Code, §§  
28 85057.5, subd. (c), 85022, subd. (c)(4), 85212, 85300, 85305, subd. (a), the CVFPP, and

1 DWR’s May 2012 Urban Levee Design Criteria); and (5) Water Code section 85054, which  
2 requires that the coequal goals shall be achieved in a manner that protects and enhances the  
3 unique cultural, recreational, natural resource, and agricultural values of the Delta as an  
4 evolving place.

5 113. The Delta Plan includes recommendations, and fails to adequately address the  
6 “protecting and enhancing Delta agriculture” component of Delta Reform Act. The Delta Plan  
7 does not include policies, only recommendations, regarding agriculture. (DP R8 Promote  
8 Value-Added Crop Processing, DP R9 Encourage Agritourism, and DP R10 Encourage  
9 Wildlife-Friendly Farming.) A much more effective approach would obviously be to prevent  
10 the conversion of agricultural land, which the Delta Plan does not address at all.

11 **Delta Plan Chapter 6: Improve Water Quality to Protect Human Health and the**  
12 **Environment**

13 114. The Delta Plan does not include any enforceable policies regarding water quality,  
14 despite strong recognition that water quality is a major stressor in the Delta. The Delta Plan  
15 thus fails to sufficiently address Water Code section 85032, subdivision (d)(3) measures to  
16 “[i]mprov[e] water quality to protect human health and the environment.” While the SWRCB’s  
17 Bay Delta Water Quality Control Plan (“WQCP”) addresses the need to protect waters in the  
18 Delta from certain kinds of degradation, the WQCP does not address the need to improve water  
19 quality in the Delta to protect human health and the environment.

20 115. The Delta Plan fails to implement the Delta Reform Act requirements for water  
21 quality protections. (Wat. Code, §§ 85020, 85022, subd. (d), 85302, subd. (d), 85302, subd.  
22 (e).) Particularly egregious is the failure to address ongoing selenium contamination from  
23 recipients of CVP water exported from the Delta, which contaminates the San Joaquin River,  
24 and eventually the Delta. Indeed, the Delta Plan encourages continued selenium contamination  
25 by promoting the BDCP (ER R12), which will encourage San Joaquin Valley Farmers to  
26 continue to apply CVP water to avoid land containing high levels of selenium, which then  
27 flows into the San Joaquin River. The Delta Plan recognizes that a major purpose of the BDCP  
28

1 is to improve exported water quality by avoiding water pollution from the San Joaquin River.  
2 (2013 Delta Plan, p. 238.)

3 116. The Delta Plan also fails to adequately address the relationship of increasing  
4 salinity to adequate flows. The plan recognizes that “[g]enerally, water quality is better in the  
5 northern Delta than in the central and southern Delta because higher quality Sacramento River  
6 inflows are greater than inflows from the San Joaquin River, and the proportion of agricultural  
7 water use and drainage in the San Joaquin Valley is greater than in the Sacramento Valley.”  
8 (2013 Delta Plan, p. 230.) Yet the Delta Plan fails to recognize that by constructing the BDCP  
9 Tunnels and diverting water more frequently from the Sacramento River that “better” water  
10 quality will be impaired. (See, e.g., March 2013 BDCP Admin. Draft EIR/EIS, Chapter 8 and  
11 Appendix 8H.)

12 **Delta Plan Chapter 7: Reduce Risk to People, Property, and State Interests in the Delta**

13 117. The Delta Plan provides inadequate and inaccurate information regarding the state  
14 of the existing levee system of the Delta. This lack of adequate background data hindered the  
15 Council in developing the necessary risk reduction policies and recommendations. The Delta  
16 Protection Commission’s Economic Sustainability Plan included detailed information regarding  
17 the status of the Delta’s levee system. The Council, however, failed to adequately consider this,  
18 as required under Water Code section 85301, subdivision (d), to inform the Council’s approach  
19 to reducing risk in the Delta. To the extent that the Council made a determination not to  
20 consider the findings and recommendations of the Delta Protection Commission on the basis  
21 that they were not feasible or were inconsistent with the Delta Plan, the Council failed to  
22 adequately support those findings.

23 118. Despite repeated attempts by Petitioners and the public to assist the Council to  
24 correct these inaccuracies, the Delta Plan includes erroneous information, such as: (1) a map  
25 that shows nonexistent levees (2013 Delta Plan, Figure 7-3, p. 275); and (2) large  
26 overstatements of the number of reclamation districts that fall below the FEMA Hazard  
27 Mitigation Plan guidance levels.  
28

1           119. Moreover, the 2012 Delta Economic Sustainability Plan recommended that the  
2 Public Law 84-99 (“PL 84-99”) standard be the minimum flood protection standard for the  
3 Delta. (Economic Sustainability Plan, p. 278.) PL 84-99 is a minimum requirement established  
4 by the U.S. Army Corps of Engineers for levees that participate in its Rehabilitation and  
5 Inspection Program. (33 U.S.C., § 701n.) The Delta Plan also significantly overstated the  
6 number of miles levees below the PL 84-99 standard; based on that erroneous information, the  
7 Council summarily concluded that funding was inadequate to obtain that objective. (2013 Delta  
8 Plan, p. 278.) This conclusion is wholly unsupported.

9           120. The Delta Plan also overstated risks associated with earthquakes in the Delta in  
10 order to justify its conclusions regarding the need for new conveyance in the form proposed by  
11 BDCP. According to the Delta Plan, a study by DWR “concluded that a major earthquake of  
12 magnitude 6.7 or greater in the vicinity of the Delta Region has a 62 percent probability of  
13 occurring sometime between 2003 and 2032 (DWR 2009).” (2013 Delta Plan, p. 270.) That  
14 information, however, was taken out of context in the cited report; the stated risk in the DWR  
15 study actually pertains to the San Francisco Bay Region, not the Delta. Additionally, the levee  
16 failure map included in the Delta Plan was prepared by the Metropolitan Water District of  
17 Southern California to garner support for the BDCP as a “fix” for earthquake hazards. (2013  
18 Delta Plan, Figure 7-2, p. 271.) Figure 7-2 presents an unrealistic and worst case picture of the  
19 risks associated with levee failures, cites the 300–year probability, and then implies that it is the  
20 30-year probability. Through these and other misleading and unscientifically supported  
21 statements, the Delta Plan is inconsistent with the Delta Reform Act mandate to base the Delta  
22 Plan on “best available scientific information. . . .” (Wat. Code, § 85308, subd. (a).)

23           121. While the Delta Plan highlighted and overstated risks from earthquakes and other  
24 catastrophic events in the Delta, the Delta Plan completely ignored documented risks to other  
25 parts of the SWP/CVP water system. For instance risks of San Luis Dam failure and aqueduct  
26 subsidence were not analyzed to determine the relationship of those risks to central and  
27 southern California’s Delta water supply reliability. In this manner, the Delta Plan fails to  
28

1 comprehensively reduce risk in a manner that sustains the economic vitality of the state. (See,  
2 e.g., Wat. Code, § 85302, subd. (d)(2).)

3 122. Under Risk Reduction Policy 2: Require Flood Protection for Residential  
4 Development in Rural Areas (RR P2), the Council required that: “New residential development  
5 of five or more parcels shall be protected through floodproofing to a level 12 inches above the  
6 100 year base flood elevation, plus sufficient additional elevation to protect against a 55-inch  
7 rise in sea level at the Golden Gate . . .” unless the development is located within specified  
8 areas. RR P2 is not reflective of best available science, as it far exceeds the scientifically  
9 supported sea level rise predictions that are currently available.

10 123. Moreover, RR P1 fails to account for the fact that sea level rise is not uniform  
11 throughout the San Francisco Bay and the Delta. Sea level in the Delta, and particularly toward  
12 the northern Delta region, will not be as high as sea levels at the Golden Gate according to U.S.  
13 Army Corps of Engineers mapping.

14 124. RR P2 is inconsistent with Senate Bill 5, which established the requirement of  
15 200-year protection for urban and urbanizing communities and incorporated the FEMA  
16 requirement of 100-year protection for rural and small community protection. The Council did  
17 not have an adequate basis for rendering development of five or more parcels subject to the  
18 urban standard. Senate Bill 5 thus occupies the field on this issue and the Council is preempted  
19 from imposing a different standard. The Cost Analysis erroneously concluded that there are  
20 “minor” state and local costs for implementing this regulation, which directly conflicts with  
21 other statements indicating that the costs of levee improvements to provide 200-year flood  
22 protection above what is required under Senate Bill 5 for non-urban areas to range from \$5.4  
23 million to \$25 million per levee mile, the cost of a new floodwall to be approximately \$9.4  
24 million per mile, with the incremental cost incurred by a local or state agency required to  
25 provide 200-year level of protection rather than 100-year to be about \$6 million per levee mile.  
26 (Compare Cost Analysis, p. 26, Table 3 with Appendix A, p. A-3.) These costs to exceed the  
27 level of flood protection provided in Senate Bill 5 are neither minor nor justified. A five mile  
28 long floodwall (estimated cost: \$47 million) could in some cases in the Delta exceed the total

1 value of land in a non-urban area protected by levees and would be well beyond the funding  
2 capacity of any reclamation district.

3 125. The Council’s policies to protect floodways and floodplains conflict with aspects  
4 of the Central Valley Flood Protection Board’s (“CVFPB”) authority and conflicts with existing  
5 laws imposed by Senate Bill 5 and being implemented pursuant to the CVFPB’s adoption of the  
6 CVFPP in 2012, which also applies in the Delta. For instance, Risk Reduction Policies 3 and 4:  
7 Protect Floodways and Protect Floodplains (RR P3 and RR P4), prohibit encroachments in  
8 these areas unless specific findings can be made. (2013 Delta Plan, p. xxxv; see also  
9 Regulations, §§ 5014, 5015.) There is no justification provided in the Delta Plan for these  
10 different and higher standards, making these new requirements confusing and costly for the  
11 public.

12 126. RR P3 and RR P4 could be read to mean that continued agriculture in floodways  
13 and floodplains conflicts with these provisions. Such a conclusion is inconsistent with Water  
14 Code sections 85020 and 85054, which state that maintenance and enhancement of levees and  
15 floodways is critical to the protection and enhancement of the unique cultural, recreation,  
16 natural resource, and agricultural values of the Delta.

17 **Delta Plan Chapter 8: Funding Principles to Support the Coequal Goals**

18 127. Part of the mandate of the Delta Reform Act includes sustaining the economic  
19 vitality of the state. (Wat. Code, § 85302, subd. (d)(2).) The economic vitality of the state  
20 includes the Delta and areas where water that is exported from the Delta originates. The Delta  
21 Plan fails to recognize that increasing costs of producing specialty local agricultural products  
22 (e.g., tree crops, certain grape crops, dichondra, endive, and specialty organic crops) will affect  
23 California competitiveness. Increased local agency costs to comply with new and unnecessary  
24 flood standards, consistency determinations and reporting requirements established by the Delta  
25 Plan will make California less competitive. As set forth above, the Council has acted arbitrarily  
26 and capriciously, prejudicially abused its discretion, and failed to proceed in a manner required  
27 by law.

1 **SECOND CAUSE OF ACTION**

2 **(The Delta Plan PEIR Does Not Comply with CEQA)**

3 128. Petitioners hereby incorporate by reference each and every allegation set forth  
4 above, paragraphs 1 through 127 inclusive.

5 129. The Council committed a prejudicial abuse of discretion and failed to proceed in a  
6 manner required by law by relying on a PEIR that fails to meet the requirements of CEQA for  
7 disclosure, analysis, mitigation of significant project impacts and/or consideration of project  
8 alternatives.

9 130. The PEIR failed to provide an accurate, stable, and finite description of the  
10 project as required by CEQA, which is essential to an informative and legally sufficient EIR.  
11 Examples of deficiencies of the PEIR’s project description, include, but are not limited to:

- 12 (a) The project description failed to describe the Policies, Recommendations  
13 and Regulations contained within the Delta Plan;
- 14 (b) The PEIR included conflicting information about whether the project  
15 would even result in any environmental impacts. For instance, the PEIR  
16 claimed that “the Revised Project would not directly result in construction  
17 or operation of projects or facilities.” (See, e.g., RDPEIR, p. 2-26.) At the  
18 same time, the PEIR claims that the Revised Project could “result in or  
19 encourage implementation of actions or development of projects, including  
20 construction and operations of facilities or infrastructure.” (RDPEIR, p. 2-  
21 26.)
- 22 (c) The PEIR was also misleading in describing the relationship of the Delta  
23 Plan to actions proposed under BDCP that the Delta Plan expressly  
24 encourages. The failure to accurately disclose the relationship between the  
25 Delta Plan and the BDCP prevents meaningful analysis of the  
26 environmental impacts of implementing the Delta Plan.  
27  
28



- 1 (d) The PEIR failed to analyze the full scope of the Project, which the Delta  
2 Plan states will be 88 years. Notwithstanding that 88 year duration, the  
3 EIR only analyzes potential impacts through 2030.
- 4 (e) The PEIR failed to describe a consistent and accurate environmental  
5 “baseline” for analysis of the project’s environmental impacts that  
6 contributed to the PEIR’s flawed analysis of environmental impacts.  
7 (CEQA Guidelines, § 15125.) For instance, the PEIR fails to adequately  
8 describe the water quality baseline conditions in continuing the fallacy that  
9 the Delta used to be saltier than it is now, and that the CVP and SWP  
10 pumps keep the South Delta “unnaturally” fresher than before. The  
11 Council was presented with information showing that average location of  
12 “the mixing zone” (or the location of X2) has been moved significantly  
13 eastward since the CVP and SWP became operational. Thus, the Delta is  
14 now saltier than it was under “historic conditions;” it is not fresher.
- 15 (f) The PEIR’s baseline condition does not adequately describe or consider  
16 the southern Delta salinity conditions and how they adversely affect  
17 agricultural, fish and wildlife and other beneficial uses.
- 18 (g) The EIR baseline condition does not adequately describe or examine the  
19 effects on the southern Delta and central Delta resulting from the existing  
20 operation of the CVP or the SWP, which are proposed to continue under  
21 the BDCP.
- 22 (h) The EIR does not use the “best available science” when examining the  
23 baseline and current conditions in the Delta.
- 24 (i) The PEIR does not adequately describe the baseline conditions, which  
25 include insufficient water supply to meet water quality objectives for the  
26 protection of fish and wildlife and agricultural beneficial uses as evidenced  
27 by ongoing violations of permit conditions by USBR and DWR, and as  
28

1 evidenced by those agencies' 2009 Urgency Petition before the SWRCB to  
2 relax the X2 fishery outflow standard.

3 (j) The PEIR does not adequately examine the baseline conditions regarding  
4 the collapse of many Delta-related fish species especially with regard to  
5 the previous, long-term failure of DWR to obtain "take" authorization from  
6 the DFW) under CESA.

7 (k) The PEIR does not adequately examine the baseline conditions regarding  
8 the relationship between historic habitat and fish populations, and  
9 incorrectly concludes that additional habitat in the Delta is related to future  
10 increased fish populations.

11 131. The PEIR failed to adequately disclose or analyze the project's impacts on the  
12 environment, including, but not limited to: impacts on water quality, waters supply,  
13 agricultural resources, biological resources, land use, recreation, public services, air quality,  
14 aesthetics, greenhouse gas/climate change, and cumulative impacts. (Pub. Resources Code, §  
15 21100, subd. (b)(1); CEQA Guidelines, § 15126.) Without limiting the scope of the claims  
16 regarding the inadequacy of the PEIR to provide an adequate assessment of the Project's  
17 potential impacts on the environment, the following paragraphs provide some examples of the  
18 inadequate analysis in the PEIR.

19 132. With respect to impacts on water quality, the PEIR failed to analyze the adverse  
20 water quality impacts that would occur in the Delta as a result of implementing the Delta Plan,  
21 instead focusing on alleged benefits to export areas of the state from "improving" conveyance.  
22 The PEIR also does not consider water quality impacts from habitat restoration projects, such as  
23 increased sediment, organic carbon and methylmercury.

24 133. The PEIR does not adequately examine the effects of the SWRCB's failure to  
25 enforce southern Delta agricultural water quality standards in relationship to the impacts of the  
26 Delta Plan.

27 134. The PEIR does not adequately examine the probable effects on water quality or to  
28 beneficial uses of water in the Delta resulting from proposed BDCP actions and programs. The

1 BDCP Tunnels propose to remove water from the Sacramento River before it passes through  
2 the main portions of the Delta, which will result in greater concentrations of numerous harmful  
3 constituents in Delta waters. Moreover, the BDCP-proposes vast expanses of tidal marsh and  
4 other riparian habitat creation, which will require water in excess of current agricultural uses  
5 and reduce Delta outflow. This impact is not analyzed in the Delta Plan PEIR.

6 135. The PEIR does not adequately examine how the provision of an adequate water  
7 supply from the Delta will affect Delta water quality, public health or the environment and  
8 other beneficial uses of Delta water.

9 136. The PEIR does not adequately examine the effects on fisheries resulting from  
10 current or future agricultural water quality standards.

11 137. The PEIR does not adequately examine the effects on the reliable supply of water  
12 for export use, which result from USBR and DWR providing in-Delta uses area of origin  
13 supply contracts.

14 138. The PEIR fails to adequately examine the effects of temporary water transfers on  
15 third parties and the environment when excluding such transfers from “covered actions.”

16 139. The PEIR purports to examine any water quality violation as a “significant  
17 impact” but then fails to mention or examine the numerous and ongoing water quality violations  
18 caused by the CVP and SWP.

19 140. With respect to water supply impacts, the PEIR failed to consider the significant  
20 impacts to in-Delta water supplies as a result of “improved conveyance” and related actions. In  
21 particular, the PEIR failed to analyze the changes in quantity and quality of usable water that  
22 will be available for in-Delta domestic, agricultural, industrial and other uses.

23 141. The PEIR fails to adequately account for the significant impacts on recreation that  
24 will occur as a result of new conveyance in the north Delta, including accompanying changes to  
25 the Sacramento River, as well as conversion of other lands to habitat. Areas negatively  
26 impacted by implementation of the Delta Plan currently contain significant recreational values  
27 not recognized in the PEIR.

28

1           142. With respect to impacts on biological resources, the PEIR failed to acknowledge  
2 the devastating biological effects of implementing new conveyance projects on special status  
3 and other species. The PEIR also fails to acknowledge the uncertainties around the creation of  
4 habitat and delivery of biological benefits, especially with respect to the benefits of tidal marsh  
5 creation.

6           143. With respect to climate change impacts, the PEIR failed to analyze possible  
7 impacts of climate change, not only including sea level rise, but also significant temperature  
8 increases in areas receiving Delta water exports.

9           144. With respect to impacts on agricultural resources, the PEIR properly  
10 characterized impacts on agricultural lands as “significant and unavoidable” from the massive  
11 reduction in agricultural land within the Delta that would occur as a result of the Delta Plan.  
12 The one-page analysis, however, overlooked important aspects of the Delta Plan, in  
13 combination with other related projects. For instance, the PEIR failed to analyze and consider  
14 the cumulative impact of the Delta Plan on agriculture in the Delta together with other proposed  
15 conversion of agricultural land, such as the Delta Wetlands Project, and other private and public  
16 proposals to develop wetlands within the leveed islands in the Delta.

17           145. With respect to public services, the PEIR fails to analyze the ripple effects of  
18 limiting development beyond current local and state restrictions in the Delta. Although  
19 development within General Plans and spheres of influence of agencies with land use  
20 jurisdiction is not considered a covered action in the Delta Plan, expansion of the utilities and  
21 other public infrastructure necessary to serve that development is not similarly excluded from  
22 the definition of a covered action. The inclusion of the infrastructure designed to serve such  
23 planned development as a covered action has an adverse effect on the values of existing  
24 facilities that were designed to eventually facilitate expanded service areas. Additionally, the  
25 apparent covered action status of such infrastructure projects could require replacement of those  
26 facilities outside the regulated area of the Delta Plan. The PEIR, however, failed to analyze  
27 those reasonably foreseeable impacts related to public services.

1           146. The PEIR improperly deferred and postponed evaluation of the environmental  
2 impacts associated with the Project, which includes new conveyance and habitat projects that  
3 are likely to occur, as part of and/or independent of the BDCP process.

4           147. With respect to cumulative impacts, the PEIR assumes that recommendations will  
5 lead to the various outcomes the Delta Plan has predicted over the Delta Plan’s 100-year  
6 planning horizon. The PEIR, however, fails to provide specifics on the amount of change that it  
7 “assumes” will occur. Such assumptions include: how many acres will be converted from  
8 agriculture to habitat, how many acres of agriculture will be replaced by water conveyance  
9 infrastructure facilities, the range of Delta water flows expected under various water  
10 conveyance schemes (3,000-15,000 cfs out of North Delta), and the amount of levee  
11 improvement investments expected over time. In order for PEIR to properly disclose the  
12 incremental effects of the Project and make a determination regarding whether the impacts are  
13 cumulatively considerable (CEQA Guidelines section 15130, subd. (a)(1)), the PEIR was  
14 required to break down the 100-year planning horizon into manageable timelines to allow  
15 “foreseeable and probable” impacts to be identified, quantified, and mitigated.

16           148. The PEIR failed to adopt feasible mitigation measures and alternatives to reduce  
17 or avoid significant impacts, in direct contravention of CEQA’s substantive mandate that all  
18 feasible mitigation measures and alternatives be adopted to avoid or reduce a project’s  
19 significant and potentially significant impacts. (CEQA Guidelines, §§ 15126.6, 15126.4.)  
20 Moreover, the adopted mitigation measures fail to meet basic legal requirements of  
21 enforceability.

22           149. By considering alternatives that include increased diversions from the Delta, the  
23 PEIR and Delta Plan are contrary to existing law, which mandates a reduced reliance on Delta  
24 water supplies by exporters.

25           150. The PEIR improperly segmented and piecemealed evaluation of the  
26 environmental impacts of the project and failed to evaluate the impact on the environment of all  
27 phases of the project, which include “planning, acquisition, development, and operation.”  
28

1           151. The PEIR failed to provide quantification, including but not limited to, failing to  
2 provide a consistent and coherent description of the future demand for new water and the  
3 amount of surface water potentially available from the Delta and Delta watershed to meet that  
4 demand.

5           152. The PEIR failed to include a reasonable range of alternatives and to provide  
6 adequate detail of the alternatives to allow the public to assess their ability to meet project  
7 objectives as well as their respective environmental impacts. (Pub. Resources Code, § 21002;  
8 CEQA Guidelines, §§ 15126.6, 15002.) For example, the PEIR does not adequately propose or  
9 examine alternatives to the current southern Delta salinity standards, or how such alternatives  
10 might improve water quality conditions and benefit public health and/or the environment.  
11 Additionally, the PEIR fails to consider that the SWRCB has proposed a relaxation of the  
12 current Southern Delta salinity standards to allow EC to be increased to 1.0 year round as its  
13 preferred alternative as a part of the Bay-Delta Water Quality Plan Update. Moreover, the  
14 RDPEIR's references to "differences" between the Proposed Project and the Revised Project  
15 are confusing, conclusory and provide an inadequate basis upon which to make comparisons  
16 between alternatives. The PEIR also failed to base its rejection of alternatives with fewer  
17 environmental impacts on substantial evidence.

18           153. The PEIR failed to adequately respond to comments submitted by the public and  
19 governmental agencies during public review of the PEIR.

20           154. The Council failed to recirculate the RDEIR, despite significant new information  
21 after circulation of the RDPEIR. For instance, the content of the Delta Plan, Regulations and  
22 policies changed substantially between release of the RDPEIR and certification of the Final  
23 PEIR. Additionally, two sets of "Red Flag" comments by the federal fish and wildlife agencies  
24 in April 2012 and April 2013 on substantial impacts on endangered species of fish including  
25 salmon as a result of the BDCP indicated that the BDCP was unlikely to meet the coequal goal  
26 of restoring the Delta ecosystem. This and other new information required recirculation under  
27 Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5, subdivision (a).  
28

1           155. The PEIR was so fundamentally and basically inadequate and conclusory in  
2 nature that meaningful public review and comment were precluded. Pursuant to CEQA  
3 Guidelines section 15088.5, subdivision (a)(4), preparation and recirculation of a new Draft  
4 PEIR is therefore required.

5           156. The Council failed to adopt adequate findings supported by substantial evidence  
6 that alternatives to the Revised Project and proposed mitigation measures and alternatives that  
7 would have avoided or lessened the significant impacts of the project were infeasible, and the  
8 Council also failed to disclose the readily available mitigation measures and alternatives that  
9 would meet the basic project objectives. (CEQA Guidelines, § 15091.)

10           157. The Council failed to properly determine that economic, legal, social,  
11 technological, or other benefits of the program were overriding considerations that permitted  
12 approval of the Delta Plan despite significant and unavoidable impacts on the environment.  
13 (CEQA Guidelines, § 15091.)

14 **The PEIR Failed to Analyze BDCP as Part of the Project or as a Cumulative Project**

15           158. The Delta Plan unequivocally encourages completion of the BDCP. (2013 Delta  
16 Plan, WR R12, at pp. xx.) As is fully evident from records provided to the Council and the  
17 numerous briefings provided to the Council by the Resources Agency, DWR and others, the  
18 BDCP is a specific project that proposes that specific diversion facilities and habitat be  
19 constructed. The BDCP will have many significant environmental effects and must be  
20 considered as a cumulative project. (CEQA Guidelines, § 15130, subd. (b) (referring to  
21 “probable future projects”).)

22           159. The Council agreed that “the EIR does not evaluate the potential environmental  
23 consequences of various BDCP options that DWR may be considering.” (Final PEIR, Master  
24 Response 1, p. 3-14, 3.2.) The Council attempts to excuse the lack of analysis of the BDCP by  
25 explaining that the Delta Plan “does not make any recommendations regarding conveyance at  
26 this time. . . .” (*Id.*) Yet this response ignores the statutory structure of the Delta Reform Act  
27 by which the Delta Plan becomes the vessel for BDCP if specified requirements are met.  
28

1           160. The BDCP has more potential to cause significant impacts in the Delta than any  
2 other project mentioned in the PEIR. Yet the analysis within the DEIR scarcely mentions the  
3 potential effects of BDCP, instead relegating details regarding BDCP to its own chapter that  
4 contains no discussion of the potential of the Delta Plan to result in environmental impacts  
5 associated with BDCP. The DEIR also carefully ignores the likely impacts of the BDCP and  
6 other likely early-term projects in each of the individual other chapters, biasing the analysis.  
7 Each impact section misleadingly states that the Project “does not direct the construction of  
8 specific projects and would not directly result in construction or operation of projects or  
9 facilities; therefore, it would result in no direct impacts on any resources.”

10           161. The PEIR, however, provides only the vaguest generality in its so-called  
11 “Cumulative Impact Assessment.” The sum total of information provided regarding the BDCP  
12 is that “examples of potential projects include the construction and operation of water and  
13 wastewater treatment plants; water conveyance facilities, including pumping plants; surface  
14 water or groundwater storage facilities; ecosystem restoration projects; flood control levees; or  
15 recreation facilities. Implementation of these types of projects and construction and operation  
16 of these types of facilities could result in significant environmental impacts.” (RDPEIR, p. 22-  
17 1.) An additional sentence then states: “Physical improvements associated with the Revised  
18 Project in combination with other water supply, ecosystem restoration, water quality, flood  
19 control, and Delta enhancement projects could violate water quality standards or waste  
20 discharge requirements, or otherwise degrade water quality.” (RDPEIR 22-1.) With respect to  
21 biological resources, similar vague generalities are provided. The only information provided is  
22 that “changes in instream flow or water quality conditions” could result from construction and  
23 operation of projects including the BDCP. (RDPEIR, p. 22-3, 22-4.) The only cumulative  
24 impact information about the BDCP is in a table stating that the BDCP permits and related  
25 EIR/EIS were scheduled to be completed by December 2012. The only additional information  
26 provided in the table is “modify SWP and CVP Delta water conveyance facilities and  
27 operations in the Delta.” (RDPEIR, p. 22-24.)  
28





1 (d) Suspend any and all activity pursuant to the Council's approval of the  
2 Delta Plan and Regulations that could result in an adverse change or  
3 alteration to the physical environment until the Council has complied with  
4 all requirements of CEQA and all other applicable state and local laws,  
5 policies, ordinances, and regulations as are directed by this Court.

6 2. For a stay, temporary restraining order, preliminary injunction, and permanent  
7 injunction prohibiting any actions by the Council pursuant to the Council's approval of the  
8 Delta Plan and Regulations and certification of the PEIR until the Council has fully complied  
9 with all requirements of the Delta Reform Act, CEQA and all other applicable state laws,  
10 policies, and regulations;

11 3. For a declaration that the Council's actions approving the Delta Plan and  
12 Regulations are inconsistent with the Delta Reform Act and other applicable laws and that the  
13 approvals are therefore invalid and have no force and effect;

14 4. For a declaration that the Council actions certifying the PEIR and approving the  
15 Delta Plan violated CEQA and that the certification and project approval has no force and  
16 effect;

17 5. For costs of the suit;

18 6. For attorneys' fees pursuant to the Code of Civil Procedure section 1021.5; and

19 7. For such other and further relief as the Court deems just and proper.  
20

21 Dated: June \_\_\_\_, 2013

FREEMAN FIRM,

22  
23 By: \_\_\_\_\_

24 THOMAS H. KEELING  
25 Attorney for Petitioners Central Delta Water  
26 Agency, South Delta Water Agency, Lafayette  
27 Ranch, Inc., and Cindy Charles  
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Dated: June \_\_\_, 2013

NOMELLINI, GRILLI & McDANIEL  
PROFESSIONAL LAW CORPORATIONS

By: \_\_\_\_\_  
DANTE JOHN NOMELLINI  
Attorney for Petitioners Central Delta Water  
Agency, South Delta Water Agency, Lafayette  
Ranch, Inc., and Cindy Charles

Dated: June \_\_\_, 2013

LAW OFFICE OF JOHN H. HERRICK

By: \_\_\_\_\_  
JOHN H. HERRICK  
Attorney for Petitioners Central Delta Water  
Agency, South Delta Water Agency, Lafayette  
Ranch, Inc., and Cindy Charles

Dated: June \_\_\_, 2013

HARRIS, PERISHO & RUIZ

By: \_\_\_\_\_  
S. DEAN RUIZ  
Attorney for Petitioners Central Delta Water  
Agency, South Delta Water Agency, Lafayette  
Ranch, Inc., and Cindy Charles

Dated: June \_\_\_, 2013

SOLURI MESERVE,  
A LAW CORPORATION

By: \_\_\_\_\_  
Osha R. Meserve  
Attorney for Petitioner  
Local Agencies of the North Delta

**VERIFICATION**

1  
2 I am an attorney at law duly admitted and licensed to practice before all courts of this  
3 State and I have my professional office at 235 East Weber Avenue, Stockton, San Joaquin  
4 County, California. I am one of the attorneys of record for Petitioners Central Delta Water  
5 Agency and South Delta Water Agency in the above-entitled action, and am authorized to  
6 execute this verification on their behalf. I have read the foregoing petition and complaint and  
7 know the contents thereof. The same is true of my own knowledge, except as to those matters  
8 which are therein alleged on information and belief, and as to those matters, I believe it to be  
9 true.

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

12 Executed at Stockton, California on \_\_\_\_\_.

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14 \_\_\_\_\_  
15 Dante John Nomellini, Sr.  
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