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14
15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SACRAMENTO
17

18 CALIFORNIA DEPARTMENT OF
WATER RESOURCES,

19
20 Plaintiff,

21 vs.

22 ALL PERSONS INTERESTED IN THE
MATTER of the Authorization of Delta
Program Revenue Bonds, the Issuance, Sale
23 and Delivery of Delta Program Revenue
Bonds Series A, Series B and Subsequent
24 Series, the Adoption of the Delta Program
Revenue Bond General Bond Resolution
25 and the Supplemental Resolutions Providing
for the Issuance of Delta Program Revenue
26 Bonds, and the Proceedings Related
Thereeto,

27 Defendants.
28

*Exempt from Filing Fees
Pursuant to Gov. Code, § 6103*

FILED BY FAX

Case No. 34-2020-00283112

Assigned for all purposes to:
Honorable Christopher Krueger, Department 31

**COUNTY OF SACRAMENTO AND
SACRAMENTO COUNTY WATER
AGENCY'S ANSWER TO COMPLAINT**

Action Filed: August 6, 2020

INTRODUCTION

1
2 Through this action the California Department of Water Resources (DWR) seeks to
3 validate its August 6, 2020 decision to incur an unlimited amount of public debt, in the form of
4 revenue bond financing, for the design, construction and operation of massive new water
5 diversion facilities on the Sacramento River in south Sacramento County, including a new tunnel
6 that would extend over 40 miles south to connect to new and/or existing State Water Project
7 (SWP) facilities in the south Sacramento-San Joaquin River Delta (collectively, the
8 “Delta Tunnel”). Sacramento County (County) is ground zero in terms of the numerous
9 devastating physical, environmental, and socioeconomic impacts of the proposed water
10 infrastructure facilities identified to be constructed in/near the communities of Freeport, Hood,
11 and Courtland. The Delta Tunnel, if approved and constructed, will not only impact County
12 residents, the environment, public facilities, and water systems in the Delta, but also has the
13 potential to significantly impact the water supplies of the County, through impacts to surface and
14 groundwater supplies of the Sacramento County Water Agency (SCWA), one of the local water
15 purveyors that would be most significantly impacted by the Delta Tunnel.

16 To protect their interests and those of their citizens and the environment, and preserve
17 their claims and rights of action, Defendants County of Sacramento and SCWA (together,
18 “Sacramento County”) respond to and answer DWR’s Complaint for Validation (Complaint) of
19 its Delta Tunnel revenue bond resolutions as follows:

20 The County is a political subdivision of the State of California and has the authority to sue
21 and be sued. The County is governed by a five-member Board of Supervisors.

22 SCWA was formed in 1952 by the Sacramento County Water Agency Act (Agency Act),
23 which is a special legislative act of the State of California. (ACT 1020 The Sacramento County
24 Water Agency Act [1952 ch. 10], §§ 1-55.) SCWA is governed by a five-member Board of
25 Directors. SCWA, under the Agency Act, is charged in part, with making water available for the
26 beneficial use of lands and inhabitants, and producing, storing, transmitting, and distributing
27 water. SCWA currently supplies potable and recycled water to approximately 150,000 persons
28

1 through more than 49,000 residential and business connections throughout its Zone 40 service
2 area.

3 **ANSWER TO COMPLAINT FOR VALIDATION**

4 1. Answering Paragraph 1, Sacramento County avers that Paragraph 1 consists of
5 legal conclusions to which no response is required. To the extent a response is required,
6 Sacramento County lacks sufficient information and belief to admit or deny the allegations
7 therein and on that basis denies all allegations in Paragraph 1.

8 2. Answering Paragraph 2, Sacramento County admits the allegations therein.

9 3. Answering Paragraph 3, Sacramento County lacks sufficient information and
10 belief to admit or deny the allegations therein and on that basis denies all allegations in
11 Paragraph 3.

12 4. Answering Paragraph 4, Sacramento County avers that Paragraph 4 consists of
13 legal conclusions to which no response is required. To the extent a response is required,
14 Sacramento County lacks sufficient information and belief to admit or deny the allegations
15 therein and on that basis denies all allegations in Paragraph 4.

16 5. Answering Paragraph 5, Sacramento County lacks sufficient information and
17 belief to admit or deny the allegations therein and on that basis denies all allegations in
18 Paragraph 5.

19 6. Answering Paragraph 6, Sacramento County avers that Paragraph 6 consists of
20 legal conclusions to which no response is required. To the extent a response is required,
21 Sacramento County lacks sufficient information and belief to admit or deny the allegations
22 therein and on that basis denies all allegations in Paragraph 6.

23 7. Answering Paragraph 7, Sacramento County admits that DWR is and was at all
24 times mentioned in DWR's Complaint a department of the Natural Resources Agency of the State
25 of California existing and operating under the constitution and laws of the State. Answering the
26 remainder of Paragraph 7, Sacramento County avers that Paragraph 7 consists of legal
27 conclusions to which no response is required. To the extent a response is required, Sacramento
28 County denies all allegations in Paragraph 7 not expressly admitted herein.

- 1 8. Answering Paragraph 8, Sacramento County admits the allegations therein.
- 2 9. Answering Paragraph 9, Sacramento County admits the allegations therein.
- 3 10. Answering Paragraph 10, Sacramento County admits the allegations therein.
- 4 11. Answering Paragraph 11, Sacramento County admits the allegations therein.
- 5 12. Answering Paragraph 12, Sacramento County admits the allegations therein.
- 6 13. Answering Paragraph 13, Sacramento County avers that Paragraph 13 consists of
7 legal conclusions to which no response is required. To the extent a response is required,
8 Sacramento County lacks sufficient information and belief to admit or deny the allegations
9 therein and on that basis denies all allegations in Paragraph 13.
- 10 14. Answering Paragraph 14, Sacramento County admits that DWR operates, manages
11 and oversees facilities which store, transport, and deliver water to urban and agricultural water
12 agencies throughout the State. Answering the remainder of Paragraph 14, Sacramento County
13 lacks sufficient information and belief to admit or deny the allegations therein and on that basis
14 denies all allegations in Paragraph 14 not expressly admitted herein.
- 15 15. Answering Paragraph 15, Sacramento County avers that Paragraph 15 consists of
16 legal conclusions to which no response is required. To the extent a response is required,
17 Sacramento County denies all allegations therein.
- 18 16. Answering Paragraph 16, Sacramento County avers that Paragraph 16 consists of
19 legal conclusions to which no response is required. To the extent a response is required,
20 Sacramento County denies all allegations in Paragraph 16.
- 21 17. Answering Paragraph 17, Sacramento County admits the allegations therein.
- 22 18. Answering Paragraph 18, Sacramento County admits the allegations therein.
- 23 19. Answering Paragraph 19, Sacramento County admits the allegations therein.
- 24 20. Answering Paragraph 20, Sacramento County avers that Paragraph 20 consists of
25 legal conclusions to which no response is required and the statute speaks for itself. To the extent
26 a response is required, Sacramento County denies all allegations in Paragraph 20.
- 27 21. Answering Paragraph 21, Sacramento County avers that Paragraph 20 consists of
28 legal conclusions to which no response is required and the statute speaks for itself. To the extent

1 a response is required, Sacramento County denies all allegations in Paragraph 21.

2 22. Answering Paragraph 22, Sacramento County avers that Paragraph 22 consists of
3 legal conclusions to which no response is required and the statute speaks for itself. To the extent
4 a response is required, Sacramento County denies all allegations in Paragraph 22.

5 23. Answering Paragraph 23, Sacramento County avers that Paragraph 23 consists of
6 legal conclusions to which no response is required and the statute speaks for itself. To the extent
7 a response is required, Sacramento County denies all allegations in Paragraph 23.

8 24. Answering Paragraph 24, Sacramento County lacks sufficient information and
9 belief to admit or deny the allegations therein and on that basis denies all allegations in
10 Paragraph 24.

11 25. Answering Paragraph 25, Sacramento County lacks sufficient information and
12 belief to admit or deny the allegations therein and on that basis denies all allegations in
13 Paragraph 25.

14 26. Answering Paragraph 26, Sacramento County admits that DWR issued a Notice of
15 Preparation on January 15, 2020, for a proposed Delta conveyance facility. Answering the
16 remainder of Paragraph 26, Sacramento County avers that Paragraph 26 contains legal
17 conclusions to which no response is required. To the extent a response is required, Sacramento
18 County denies all allegations in Paragraph 26 not expressly admitted herein.

19 27. Answering Paragraph 27, Sacramento County lacks sufficient information and
20 belief to admit or deny the allegations therein and on that basis denies all allegations in
21 Paragraph 27.

22 28. Answering Paragraph 28, Sacramento County denies that the design and physical
23 characteristics of any Delta conveyance facilities are not yet determined. Answering the
24 remainder of the first sentence of Paragraph 28 and the second and third sentences of
25 Paragraph 28, Sacramento County lacks sufficient information and belief to admit or deny the
26 allegations therein and on that basis denies those allegations. Answering the remainder of
27 Paragraph 28, Sacramento County avers that Paragraph 28 consists of legal conclusions to which
28 no response is required. To the extent a response is required, Sacramento County denies all

1 allegations in the remainder of Paragraph 28.

2 29. Answering Paragraph 29, Sacramento County avers that Paragraph 29 consists of
3 legal conclusions to which no response is required. To the extent a response is required,
4 Sacramento County denies all allegations in Paragraph 29.

5 30. Answering Paragraph 30, Sacramento County avers that Paragraph 30 consists of
6 legal conclusions to which no response is required. To the extent a response is required,
7 Sacramento County denies all allegations in Paragraph 30.

8 31. Answering Paragraph 31, Sacramento County avers that Paragraph 31 consists of
9 legal conclusions to which no response is required. To the extent a response is required,
10 Sacramento County denies all allegations in Paragraph 31.

11 32. Answering Paragraph 32, Sacramento County avers that Paragraph 32 consists of
12 legal conclusions to which no response is required. To the extent a response is required,
13 Sacramento County denies all allegations in Paragraph 32.

14 33. Answering Paragraph 33, Sacramento County avers that Paragraph 33 consists of
15 legal conclusions to which no response is required. To the extent a response is required,
16 Sacramento County denies all allegations in Paragraph 33.

17 34. Answering Paragraph 34, Sacramento County avers that Paragraph 34 consists of
18 legal conclusions to which no response is required. To the extent a response is required,
19 Sacramento County denies all allegations in Paragraph 34.

20 35. Answering Paragraph 35, Sacramento County avers that Paragraph 35 consists of
21 legal conclusions to which no response is required. To the extent a response is required,
22 Sacramento County denies all allegations in Paragraph 35.

23 36. Answering Paragraph 36, Sacramento County avers that Paragraph 36 consists of
24 legal conclusions to which no response is required. To the extent a response is required,
25 Sacramento County denies all allegations in Paragraph 36.

26 37. Answering Paragraph 37, Sacramento County admits that Chapter 2 of the Central
27 Valley Project Act encompasses Sections 11200 through 11295 of the Water Code. Answering
28 the remainder of Paragraph 37, Sacramento County avers that Paragraph 37 consists of legal

1 conclusions to which no response is required, and the statute speaks for itself. To the extent a
2 response is required, Sacramento County denies all allegations in Paragraph 37 not expressly
3 admitted therein.

4 38. Answering Paragraph 38, Sacramento County avers that Paragraph 38 consists of
5 legal conclusions to which no response is required, and the statute speaks for itself. To the extent
6 a response is required, Sacramento County denies all allegations in Paragraph 38.

7 39. Answering Paragraph 39, Sacramento County avers that Paragraph 39 consists of
8 legal conclusions to which no response is required, and the statute speaks for itself. To the extent
9 a response is required, Sacramento County denies all allegations in Paragraph 39.

10 40. Answering Paragraph 40, Sacramento County avers that Paragraph 40 consists of
11 legal conclusions to which no response is required, and the statute speaks for itself. To the extent
12 a response is required, Sacramento County denies all allegations in Paragraph 40.

13 41. Answering Paragraph 41, Sacramento County avers that Paragraph 41 consists of
14 legal conclusions to which no response is required. To the extent a response is required,
15 Sacramento County denies all allegations in Paragraph 41.

16 42. Answering Paragraph 42, Sacramento County avers that Paragraph 42 consists of
17 legal conclusions to which no response is required. To the extent a response is required,
18 Sacramento County denies all allegations in Paragraph 42.

19 43. Answering Paragraph 43, Sacramento County avers that Paragraph 43 consists of
20 legal conclusions to which no response is required and the statute speaks for itself. To the extent
21 a response is required, Sacramento County denies all allegations in Paragraph 43.

22 44. Answering Paragraph 44, Sacramento County avers that Paragraph 44 consists of
23 legal conclusions to which no response is required and the statute speaks for itself. To the extent
24 a response is required, Sacramento County denies all allegations in Paragraph 44.

25 45. Answering Paragraph 45, Sacramento County avers that Paragraph 45 consists of
26 legal conclusions to which no response is required and the statute speaks for itself. To the extent
27 a response is required, Sacramento County denies all allegations in Paragraph 45.

28 46. Answering Paragraph 46, Sacramento County admits that resolution designated

1 No. DWR-DPRB-1, dated August 6, 2020, and titled “Delta Program Revenue Bond General
2 Bond Resolution” (Resolution) is attached as Exhibit 1 to DWR’s Complaint, and that the
3 document speaks for itself. As to the remainder of Paragraph 46, Sacramento County denies all
4 allegations in Paragraph 46 not expressly admitted herein.

5 47. Answering Paragraph 47, Sacramento County admits that the Resolution defines
6 the “Delta Program” as stated in Paragraph 47. Answering the remainder of Paragraph 47,
7 Sacramento County lacks sufficient information and belief to admit or deny the allegations
8 therein and on that basis denies all allegations in Paragraph 47 not expressly admitted herein, and
9 further responds that the Resolution speaks for itself.

10 48. Answering Paragraph 48, Sacramento County admits that Section 203 is included
11 in the Resolution as stated in Paragraph 48. Answering the remainder of Paragraph 48,
12 Sacramento County avers that Paragraph 48 consists of a legal conclusion to which no response is
13 required. To the extent a response is required, Sacramento County denies all allegations in
14 Paragraph 48 not expressly admitted herein, and further responds that the Resolution speaks for
15 itself.

16 49. Answering Paragraph 49, Sacramento County avers that Paragraph 49 consists of a
17 legal conclusion to which no response is required. To the extent a response is required,
18 Sacramento County denies all allegations in Paragraph 49, and further responds that the
19 Resolution speaks for itself.

20 50. Answering Paragraph 50, Sacramento County avers that Paragraph 50 consists of a
21 legal conclusion to which no response is required. To the extent a response is required,
22 Sacramento County denies all allegations in Paragraph 50, and further responds that the
23 Resolution speaks for itself.

24 51. Answering Paragraph 51, Sacramento County avers that Paragraph 51 consists of
25 legal conclusions to which no response is required. To the extent a response is required,
26 Sacramento County denies all allegations in Paragraph 51, and further responds that the
27 Resolution speaks for itself.

28 52. Answering Paragraph 52, Sacramento County avers that Paragraph 52 consists of

1 legal conclusions to which no response is required. To the extent a response is required,
2 Sacramento County denies all allegations in Paragraph 52, and further responds that the
3 Resolution speaks for itself.

4 53. Answering Paragraph 53, Sacramento County lacks sufficient information and
5 belief to admit or deny the allegations therein denies all allegations in Paragraph 53, and further
6 responds that the Resolution speaks for itself.

7 54. Answering Paragraph 54, Sacramento County avers that Paragraph 54 consists of
8 legal conclusions to which no response is required. To the extent a response is required,
9 Sacramento County denies all allegations in Paragraph 54, and further responds that the
10 Resolution speaks for itself.

11 55. Answering Paragraph 55, Sacramento County admits that a resolution designated
12 No. DWR-DPRB-2, dated August 6, 2020, and titled “First Supplemental Resolution Providing
13 for the Issuance of Delta Program Revenue Bond, Series A” (First Supplemental Resolution) and
14 a resolution designated No. DWR-DPRB-3, dated August 6, 2020, and titled “Second
15 Supplemental Resolution Providing for the Issuance of Delta Program Revenue Bonds, Series B”
16 (Second Supplemental Resolution) (First Supplemental Resolution and Second Supplemental
17 Resolution collectively referred to as “Delta Program Revenue Bond Resolutions “) are attached
18 as Exhibits 2 and 3, respectively, to DWR’s Complaint, and that the documents speak for
19 themselves. As to the remainder of Paragraph 55, Sacramento County lacks sufficient
20 information and belief to admit or deny the allegations therein and on that basis denies all
21 allegations in Paragraph 55 not expressly admitted herein.

22 56. As to Paragraph 56, Sacramento County lacks sufficient information and belief to
23 admit or deny the allegations therein and on that basis denies all allegations in Paragraph 56, and
24 further responds that the Resolution and First Supplemental Resolution speak for themselves.

25 57. As to Paragraph 57, Sacramento County admits that the First Supplemental
26 Resolution contains Section 1304 as written, and further responds that the First Supplemental
27 Resolution otherwise speaks for itself.

28 58. As to Paragraph 58, Sacramento County avers that Paragraph 58 consists of legal

1 conclusions to which no response is required. To the extent a response is required, Sacramento
2 County denies all allegations in Paragraph 58, and further responds that the Resolution and First
3 Supplemental Resolution speak for themselves.

4 59. As to Paragraph 59, Sacramento County lacks sufficient information and belief to
5 admit or deny the allegations therein and on that basis denies all allegations in Paragraph 59, and
6 further responds that the Resolution and Second Supplemental Resolution speak for themselves.

7 60. As to Paragraph 60, Sacramento County admits that the Second Supplemental
8 Resolution contains Section 1704, and further responds that the Second Supplemental Resolution
9 speaks for itself.

10 61. As to Paragraph 61, Sacramento County lacks sufficient information and belief to
11 admit or deny the allegations therein and on that basis denies all allegations in Paragraph 61, and
12 further responds that the Second Supplemental Resolution speaks for itself.

13 62. As to Paragraph 62, Sacramento County avers that Paragraph 62 consists of legal
14 conclusions to which no response is required. To the extent a response is required, Sacramento
15 County denies all allegations in Paragraph 62.

16 63. As to Paragraph 63, Sacramento County avers that Paragraph 63 consists of legal
17 conclusions to which no response is required. To the extent a response is required, Sacramento
18 County denies all allegations in Paragraph 63, and further responds that the statute speaks for
19 itself.

20 64. As to Paragraph 64, Sacramento County admits that the principal office of DWR is
21 located in Sacramento, California. Answering the remainder of Paragraph 64, Sacramento
22 County avers that Paragraph 64 consists of legal conclusions to which no response is required and
23 the statute speaks for itself. To the extent a response is required, Sacramento County denies all
24 allegations in Paragraph 64.

25 65. As to Paragraph 65, Sacramento County avers that Paragraph 65 consists of legal
26 conclusions to which no response is required. To the extent a response is required, Sacramento
27 County denies all allegations in Paragraph 65, and further responds that the statutes speak for
28 themselves.

1 66. As to Paragraph 66, Sacramento County avers that Paragraph 66 consists of legal
2 conclusions to which no response is required. To the extent a response is required, Sacramento
3 County denies all allegations in Paragraph 66.

4 67. As to Paragraph 67, Sacramento County avers that Paragraph 67 consists of legal
5 conclusions to which no response is required. To the extent a response is required, Sacramento
6 County denies all allegations in Paragraph 67.

7 68. As to Paragraph 68, Sacramento County lacks sufficient information and belief to
8 admit or deny the allegations therein and on that basis denies all allegations in Paragraph 68.

9 69. As to Paragraph 69, Sacramento County avers that Paragraph 69 consists of legal
10 conclusions to which no response is required. To the extent a response is required, Sacramento
11 County denies all allegations in Paragraph 69.

12 70. As to Paragraph 70, Sacramento County lacks sufficient information and belief to
13 admit or deny the allegations therein and on that basis denies all allegations in Paragraph 70.

14 71. As to Paragraph 71, Sacramento County avers that Paragraph 71 consists of legal
15 conclusions to which no response is required. To the extent a response is required, Sacramento
16 County lacks sufficient information and belief to admit or deny the allegations therein and on that
17 basis denies all allegations in Paragraph 71.

18 72. Answering Paragraph 72, Sacramento County re-alleges and incorporates by
19 reference each and every response set forth in Paragraphs 1 through 71 above.

20 73. Answering Paragraph 73, Sacramento County denies all allegations therein.

21 74. Answering Paragraph 74, Sacramento County denies all allegations therein.

22 75. Answering Paragraph 75, Sacramento County denies all allegations therein.

23 76. Answering Paragraph 76, Sacramento County denies all allegations therein.

24 77. Answering Paragraph 77, Sacramento County denies all allegations therein.

25 78. Answering Paragraph 78, Sacramento County denies all allegations therein.

26 79. Answering Paragraph 79, Sacramento County denies all allegations therein.

27 80. Answering Paragraph 80, Sacramento County denies all allegations therein.

28 81. Answering Paragraph 81, Sacramento County denies all allegations therein.

- 1 82. Answering Paragraph 82, Sacramento County denies all allegations therein.
2 83. Answering Paragraph 83, Sacramento County denies all allegations therein.
3 84. Answering Paragraph 84, Sacramento County denies all allegations therein.
4 85. Answering Paragraph 85, Sacramento County denies all allegations therein.
5 86. Answering Paragraph 86, Sacramento County denies all allegations therein.
6 87. Answering Paragraph 87, Sacramento County denies all allegations therein.
7 88. Answering Paragraph 88, Sacramento County denies all allegations therein.

8 **AFFIRMATIVE DEFENSES - FACTUAL BACKGROUND**

9 89. On or about July 21, 2017, DWR adopted Resolution No. DWR-CWF-1, titled
10 “California WaterFix Revenue Bond General Bond Resolution” (WaterFix Bond Resolution).
11 This Resolution defines the project, California WaterFix, as “the units described in Project Order
12 No. 40.”

13 90. Project Order No. 40, adopted by DWR on or about July 21, 2017, in turn
14 provided that California WaterFix would consist of:

15 “[1] Three north Delta Intakes with fish screens along the east bank
16 of the Sacramento River between Clarksburg and Courtland with
 box conduits, sedimentation basins, gates and a drop structure;

17 “[2] A single-bore tunnel connecting two of the intakes and the
 intermediate forebay;

18 “[3] A single-bore tunnel between the final intake and the
 intermediate forebay;

19 “[4] An intermediate forebay on the Glannville Tract;

20 “[5] An outlet structure to convey water from the intermediate
21 forebay into each main tunnel bore via a vertical shaft[;]

22 “[6] Two 40-foot-inside-diameter tunnels between the Intermediate
 forebay and two 4,500 cfs pumping plants leading to a modified
 Clifton Court Forebay;

23 “[7] Modifications to the Clifton Court Forebay;

24 “[8] Connections and control structures to the Banks and Jones
 pumping plants;

25 “[9] A permanent, operable gate where the San Joaquin River and
26 Old River diverge; and

27 “[10] Associated, related and appurtenant facilities, including, but
28 not limited to, electric transmission lines and roads.”

1 91. On July 21, 2017, DWR certified an environmental impact report (EIR) for the
2 California WaterFix pursuant to the California Environmental Quality Act (CEQA) and approved
3 the project.

4 92. On May 14, 2018, DWR announced the formation of the Delta Conveyance
5 Design and Construction Authority (DCA), a joint powers authority consisting of SWP
6 contractors deputized by DWR “to staff, design, contract, construct and finance the California
7 WaterFix project.” (See DWR 5/14/18 blog at [https://water.ca.gov/News/Blog/2018/May-
8 18/Delta-Conveyance-Design-and-Construction-Authority-Announced](https://water.ca.gov/News/Blog/2018/May-18/Delta-Conveyance-Design-and-Construction-Authority-Announced).) The DCA operates
9 pursuant to a Joint Exercise of Powers Agreement (JEPA) with DWR first adopted in 2018. The
10 Metropolitan Water District of Southern California (MWD) holds two of the four board member
11 seats of the DCA.

12 93. In July of 2018, DWR released a Draft Supplemental EIR/EIS (DSEIR) that
13 evaluated changes to the Project design and construction, including relocating project components
14 to Bouldin Island. MWD owns over 20,000 acres of land that fell within the California WaterFix
15 alignment, including Webb Tract, Bacon Island, and Bouldin Island, as well as portions of
16 Holland Tract. The DSEIR was never certified.

17 94. Also, on July 10, 2018, the MWD Board of Directors approved increased funding
18 from 25.9 percent to up to 64.6 percent of the overall capital cost of the California WaterFix.

19 95. On May 2, 2019, following statements by Governor Gavin Newsom that he did not
20 support the California WaterFix but did support a single-tunnel delta conveyance project, DWR
21 formally withdrew its approval for California WaterFix and its certification of the EIR and issued
22 an accompanying statement of its intention to “begin a renewed environmental review and
23 planning process for a smaller, single tunnel project” (See DWR 5/2/2019 News Release at
24 <https://water.ca.gov/News/News-Releases/2019/May/State-Withdraws-WaterFix-Approvals>.)

25 96. On May 7, 2019, DWR formally rescinded the WaterFix Bond Resolution. DWR
26 also withdrew Project Order 40.

27 97. DWR and the DCA amended the JEPA in June of 2019 to reflect the change from
28 California WaterFix to a single tunnel conveyance project—the Delta Tunnel that comprises

1 DWR’s Delta Program. The June 2019 JEPA amendment included an initial contribution by
2 DWR of more than \$19 million towards tunnel planning efforts, to be repaid by the SWP
3 contractors, and a budget of more than \$348 million in expected expenditures towards Delta
4 Tunnel planning and implementation through May of 2022. DWR and the DCA have amended
5 the JEPA multiple times since June 2019 to increase DWR’s financial contribution to the
6 engineering design of the new Delta Tunnel project to more than \$43 million. Despite provisions
7 in the JEPA requiring the SWP contractors to reimburse DWR for its contributions and Delta
8 Reform Act requirements that the water contractors pay the cost of Delta Program planning and
9 construction, no such reimbursements or financial contributions have occurred since August
10 2019. DWR’s funding commitments for the most recent version of the Delta Tunnel project, and
11 its decision to authorize the sale of bonds in an unlimited amount for planning, design,
12 construction and operation of such project, are made on top of the hundreds of millions of dollars
13 already expended by DWR, federal and SWP contractors, and particularly MWD, in furtherance
14 of a Delta Tunnel project in its current and former iterations.

15 98. On January 15, 2020, DWR issued a Notice of Preparation (NOP) for a draft EIR
16 for the Delta Tunnel (which DWR has termed the “Delta Conveyance Project”). The NOP states
17 that new facilities for the proposed Delta Tunnel project “include, but are not limited to, the
18 following”: (1) intake facilities on the Sacramento River between Freeport and the confluence
19 with Sutter Slough with fish screens, sedimentation basins, and ancillary facilities; (2) up to two
20 tunnel reaches to connect the intakes to an Intermediate Forebay; (3) a single tunnel from the
21 Intermediate Forebay, located along the tunnel corridor between the intakes and the pumping
22 plant, to a Southern Forebay, located near the existing Clifton Court Forebay; (4) a pumping plant
23 located at the Southern Forebay; and (5) two connecting south tunnel reaches as part of the
24 proposed “South Delta Conveyance Facilities,” which would connect the Southern Forebay to the
25 Banks Pumping Plant and potentially the Jones Pumping Plant. The NOP further states that the
26 single main tunnel will follow “one of two potential optional corridors,” the Central Tunnel
27 Corridor and the Eastern Tunnel Corridor. The Central Tunnel Corridor runs south through
28 Staten, Bouldin, and Bacon Islands, and closely resembles the California WaterFix configuration.

1 The Eastern Corridor runs south through Canal Ranch Tract and Terminus Tract, to Lower
2 Roberts Island, and westerly to Lower Jones Tract.

3 **FIRST AFFIRMATIVE DEFENSE**

4 **(Failure to State a Claim)**

5 99. Sacramento County re-alleges and incorporates by reference paragraphs 1-98
6 above as though set forth fully herein.

7 100. DWR's Complaint, including each purported cause of action and remedy sought
8 therein, fails to allege facts sufficient to constitute a cause of action.

9 **SECOND AFFIRMATIVE DEFENSE**

10 **(Prematurity/Ripeness)**

11 101. Sacramento County re-alleges and incorporates by reference paragraphs 1-100
12 above as though set forth fully herein.

13 102. DWR seeks to establish "valid, legal and binding obligations," the validity of
14 which all others would be enjoined and restrained from challenging in the future. As a separate
15 Second Affirmative Defense, Sacramento County is informed and believes and thereon alleges
16 that the validation sought by DWR would be premature under Code of Civil Procedure
17 section 860 et seq. for at least the following reasons:

18 a. Essential details of the financing remain undefined, unapproved, or both.
19 For example, DWR lacks authority to issue revenue bonds for the Delta Program under its
20 existing SWP contracts, which require amendment for the proposed Delta Program to be deemed
21 part of the SWP. DWR initiated a SWP contract amendment process for the first version of the
22 Delta Tunnel facilities in 2014, which is incomplete and remains dormant.

23 b. The proposed procedure for bond repayment is vague, confusing, and
24 incomplete.

25 c. DWR has failed to comply with Water Code section 11701 in that it has
26 not prepared preliminary cost estimates, nor an estimate of the amount required to be raised for
27 those purposes by the issuance of the Delta Program revenue bonds, nor a statement of the
28 probable amount of money, property, materials, or labor, if any, to be contributed from other

1 sources in aid thereof, and, moreover, has failed to relate its declaration of public interest and
2 necessity for the issuance of Delta Program revenue bonds to a specified limit of funds estimated
3 to be required for those purposes as alleged more specifically below in Sacramento County’s
4 Eighth Affirmative Defense.

5 d. DWR has failed to comply with CEQA in adopting the Resolution, First
6 Supplemental Resolution, and Second Supplemental Resolution (collectively, “Delta Program
7 Revenue Bond Resolutions”), as alleged more specifically below in Sacramento County’s Sixth
8 Affirmative Defense.

9 **THIRD AFFIRMATIVE DEFENSE**

10 **(Lack of Subject Matter Jurisdiction)**

11 103. Sacramento County re-alleges and incorporates by reference paragraphs 1-102
12 above as though set forth fully herein.

13 104. As a separate Third Affirmative Defense, Sacramento County is informed and
14 believes and thereon alleges that the acts alleged in the Complaint violate Water Code
15 section 85089 (a provision of the Delta Reform Act) because they do not rely exclusively on
16 revenues from persons or entities that contract to receive water from the SWP and the federal
17 Central Valley Project (CVP). Specifically, the Delta Program Revenue Bond Resolutions, in
18 addition to relying on revenues from SWP contractors, contemplate receipt of revenues “from any
19 other legally available source.” DWR is otherwise required to rely exclusively on contractor
20 revenues pursuant to Water Code section 85089. Because the Delta Program Revenue Bond
21 Resolutions do not rely exclusively on revenues from persons or entities that contract to receive
22 water from the SWP and the federal CVP, DWR does not have authority to adopt the Delta
23 Program Revenue Bond Resolutions, nor issue bonds pursuant to them, and the acts alleged in the
24 Complaint exceed DWR’s legal authority and/or are ultra vires. Therefore, there is no basis for
25 DWR to bring this validation action under Code of Civil Procedure section 860, and this Court
26 lacks subject matter jurisdiction.

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FOURTH AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

105. Sacramento County re-alleges and incorporates by reference paragraphs 1-104 above as though set forth fully herein.

106. As a separate Fourth Affirmative Defense, Sacramento County is informed and believes and thereon alleges that the acts alleged in the Complaint violate the “beneficiary pays” principle in Water Code section 85089 because DWR is required to rely exclusively on revenues paid by the water users who benefit from the Delta Tunnel, and instead, the Delta Program Revenue Bond Resolutions rely, in part, on revenue from contractors located north of the proposed conveyance facilities who will not benefit from the Delta Tunnel. Because the Bond Resolutions rely on revenue from contractors who will not benefit from the Delta Tunnel, DWR does not have authority to adopt the Bond Resolutions or issue bonds pursuant to them, and the acts alleged in the Complaint exceed DWR’s legal authority and/or are ultra vires. Therefore, there is no basis for DWR to bring this validation action under Code of Civil Procedure section 860, and this Court lacks subject matter jurisdiction.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

107. Sacramento County re-alleges and incorporates by reference paragraphs 1-106 above as though set forth fully herein.

108. As a separate Fifth Affirmative Defense, Sacramento County is informed and believes and thereon alleges that DWR does not have authority to construct the Delta Program as a “unit” of the CVP (as the CVP is defined in Water Code sections 11200-11295). Because DWR does not have authority to construct the Delta Program as a unit of the CVP, DWR does not have authority to adopt the Delta Program Revenue Bond Resolutions or issue bonds for construction of the Delta Program, and the acts alleged in the Complaint exceed DWR’s legal authority and/or are ultra vires. Therefore, there is no basis for DWR to bring this validation action under Code of Civil Procedure section 860, and this Court lacks subject matter jurisdiction.

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1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Violation of CEQA)**

3 109. Sacramento County re-alleges and incorporates by reference paragraphs 1-108
4 above as though set forth fully herein.

5 110. A party may bring a CEQA challenge in its opposition to a validation action
6 separate from any mandamus petition. (*County of Imperial v. Superior Court* (2007)
7 152 Cal.App.4th 13, 40.) Accordingly, as a separate Sixth Affirmative Defense, Sacramento
8 County alleges that DWR’s adoption of the Delta Program Revenue Bond Resolutions violated
9 CEQA (Pub. Resources Code, § 21000 et seq.), and thus this Court cannot provide DWR the
10 relief it requests to validate: (1) DWR’s authority to adopt and approve the Delta Program
11 Revenue Bond Resolutions; (2) DWR’s authority to review, plan, engineer, design, acquire and
12 construct Delta Program conveyance facilities as a unit of the CVP (as the CVP is defined in
13 Water Code sections 11200-11295); (3) DWR’s authority to authorize the issuance of Delta
14 Program Revenue Bonds in accordance with the terms of the Delta Program Revenue Bond
15 Resolutions; (4) DWR’s authority to pledge revenues from the Delta Program for the repayment
16 of the Delta Program Revenue Bonds; or (5) DWR’s authority to apply Delta Program Revenue
17 Bond proceeds to Delta Program planning and constructions costs. In adopting the Delta Program
18 Revenue Bond Resolutions, DWR approved more than a mere funding mechanism; it in fact
19 approved a “project” without the requisite environmental review under CEQA. Moreover,
20 DWR’s approval of the Delta Program Revenue Bond Resolutions creates irreversible
21 bureaucratic and financial momentum behind the Delta Tunnel facilities that constrain or prevent
22 DWR from objectively considering the environmental consequences of the design and
23 construction of the facilities, including the possibility of modifying the project or not proceeding
24 with the project at all, as required by CEQA. (See Pub. Resources Code, § 21000 et seq.)

25 111. A “project” subject to CEQA is defined as “an activity which may cause either a
26 direct physical change in the environment, or a reasonably foreseeable indirect physical change in
27 the environment, and which is . . . [a]n activity directly undertaken by any public agency.” (Pub.
28 Resources Code, § 21065.) “The creation of government funding mechanisms or other

1 government fiscal activities” does not qualify as a project for purposes of CEQA only if such
2 mechanisms or activities “do not involve any commitment to any specific project which may
3 result in a potentially significant physical impact on the environment.” (Cal. Code Regs., tit. 14,
4 § 15378(b)(4).)

5 112. CEQA requires that, prior to making a commitment to approve or undertake a
6 project, state agencies fully consider the project’s environmental effects and identify ways to
7 avoid or reduce environmental harm, including incorporating those means into the project design
8 as alternatives or mitigation measures. (Pub. Resources Code, §§ 21000(g), 21081(a)(1); Cal.
9 Code Regs., tit. 14, § 15002(a).) As part of this review, an agency must objectively consider the
10 possibility of modifications to the project, including the selection of the no-project alternative –
11 essentially a decision against proceeding with the project. (Cal. Code Regs., tit. 14,
12 § 15126.6(e).) This analysis serves dual purposes: (a) to inform the agency’s decision makers
13 about the environmental consequences of a proposed project compared to other options; and
14 (b) to provide transparency and assurance to the public that the agency considered, and avoided to
15 the extent feasible, adverse environmental impacts of the project. (*Ibid.*)

16 113. To achieve these purposes, CEQA requires that this environmental review of a
17 project, including the consideration of alternatives and selection of effective mitigation measures,
18 occur *before* a lead agency has committed to a project. The goals of CEQA are frustrated when
19 an agency commits itself to a particular project at a stage where it precludes itself from
20 considering changes to that project that could lessen the environmental impacts of the project.
21 Committing to a project in advance of environmental review allows EIRs to become post-hoc
22 rationalizations to support decisions already made. (*Laurel Heights Improvement Assn v. Regents*
23 *of University of California* (1988) 47 Cal.3d 376, 394; see also *Save Tara v. City of West*
24 *Hollywood* (2008) 45 Cal.4th 116, 132.) CEQA rejects this approach, and cautions that allowing
25 “bureaucratic and financial momentum” to build up behind a project can “provid[e] a strong
26 incentive to ignore environmental concerns.” (*Save Tara, supra*, 45 Cal.4th at p. 135 [quoting
27 *Laurel Heights Improvement Assn, supra*, 47 Cal.3d at p. 395].)

28 114. Although the Complaint states that “[t]he design and physical characteristics of

1 any . . . Delta conveyance facilities are not yet determined, nor has the Department approved a
2 project for implementation” (Complaint, ¶ 28), the relevant consideration for determining a public
3 agency’s commitment to a project is, instead, an examination of “the totality of the circumstances
4 and the practical effect of the public agency’s action on its ability and willingness to modify or
5 reject the proposed project.” (*City of Irvine v. County of Orange* (2013) 221 Cal.App.4th 846,
6 857, citing *Save Tara, supra*, 45 Cal.4th at pp. 132–133, 136, 138; see also *City of Irvine, supra*,
7 221 Cal.App.4th at p. 865 [holding that “[t]he amount of detail or the advanced stage of the
8 project’s design . . . covers only part of the analysis for determining whether an agency’s action
9 constitutes an approval under CEQA”].)

10 115. The NOP issued by DWR is a thinly-veiled reimagining of the California
11 WaterFix conveyance project. The Delta Tunnel project described in DWR’s NOP is in no
12 significant way—other than the single main tunnel—different from the California WaterFix, as
13 emphasized by the identical intake locations and sizing (3,000 cubic feet per second each) and
14 Central Tunnel Corridor alignment option, which follows the location and arrangement of
15 California WaterFix facilities.

16 116. Because the NOP describes a project that is essentially the same as the WaterFix in
17 terms of facilities, it presents the same essential concerns with respect to physical environmental
18 effects. The proposed project as described in the NOP, if approved and constructed, will impact
19 Sacramento County’s residents, public facilities, and businesses in myriad and far-reaching ways.
20 The residents and communities of Sacramento County will bear a disproportionate burden of the
21 likely numerous significant unavoidable environmental impacts, which will benefit only
22 agricultural and urban water users south of the Delta. The proposed water infrastructure facilities
23 will slow or prevent the realization of the Delta National Heritage Area’s agricultural tourism,
24 recreation and historic preservation goals that are critical to maintaining the “Delta as a Place.”
25 These impacts are in direct contravention of the State’s 2020 Water Resilience Portfolio, which
26 states that Delta conveyance facilities are intended to “protect water quality, and improve aquatic
27 habitat conditions while limiting local impacts.” (See 2020 Water Resilience Portfolio at
28 https://waterresilience.ca.gov/wp-content/uploads/2020/07/Final_California-Water-Resilience-

1 [Portfolio-2020 ADA3 v2 ay11-opt.pdf](#), p. 42, item 19.1.)

2 117. The design of the Delta Tunnel is within the authority of the DCA, whose Board of
3 Directors is comprised of two MWD members out of a total of four members. It is undisputed
4 that MWD is aligned with DWR in this validation action and other such relevant approvals for the
5 resulting Delta Tunnel project. Notably, MWD is responsible for 64.6 percent of the overall
6 capital cost of the resulting Delta project and owns property directly within the path of the
7 proposed Central Tunnel Corridor—specifically, Bouldin Island, which was also incorporated
8 into the project design in DWR’s DSEIR. DWR has already committed \$43.2 million to the DCA
9 since June of 2019 without securing financing.

10 118. Therefore, while DWR suggests it merely seeks “to confirm [the] public agency’s
11 legal authority to undertake a proposed financing” (Complaint, ¶ 66), the totality of the
12 circumstances demonstrate DWR’s continued commitment to proceed with substantially the same
13 Delta Tunnel project that it has been pursuing, and funding, for well over a decade. As evidenced
14 by the detailed proposal of the Delta Tunnel facilities in the NOP and the proposed facilities’
15 striking similarity to the California WaterFix, and emphasized by DWR’s determination stated in
16 the recitals of the Resolution that “the public interest and necessity require the carrying out of the
17 Delta Program . . .” (Complaint, ¶ 52), the environmental effects that could result from adoption
18 of the Delta Program Revenue Bond Resolutions are not conceptual, diffuse, or speculative.
19 DWR has demonstrably committed itself to a course of action with respect to specifically
20 identified Delta conveyance facilities that will have devastating environmental impacts, and so
21 unlawfully adopted the Delta Program Revenue Bond Resolutions without conducting the
22 requisite environmental review and public participation required for a “project” pursuant to
23 CEQA.

24 119. Moreover, while DWR is under no legal obligation to pursue validation under
25 Code of Civil Procedure Section 860, it does so now with the intention of relying on such
26 validation to incur unlimited financial obligations in furtherance of a well-defined project, despite
27 the legal requirement that ongoing CEQA review requires that it, as the CEQA lead agency, leave
28 open the meaningful possibility that the project design may, or should, be substantially modified,

1 or rejected outright. As the Complaint admits, quoting from the Resolution, “[t]he aggregate
2 principal amount of Bonds which may be executed, authenticated and delivered under this
3 Resolution is *not limited*” (Complaint, ¶ 48, emphasis added). DWR seeks court approval
4 to borrow an unlimited amount of money to pay for the Delta Tunnel, on top of its previous
5 expenditures in furtherance of the current and former Delta Tunnel facilities. The DCA recently
6 estimated that the Delta Tunnel project would cost \$15.9 billion, and possibly over \$21 billion,
7 before accounting for the costs of issuing bonds and repaying interest, indicating the possible
8 extent of the financial commitment DWR authorized in adopting the Delta Program Revenue
9 Bond Resolutions. Considering the totality of the circumstances, DWR’s efforts to proceed under
10 the Delta Program Revenue Bond Resolutions constitute more than a mere step in securing
11 funding, and create additional bureaucratic and financial momentum behind the Delta Program
12 that will constrain or prevent DWR from objectively considering the environmental consequences
13 of the project design.

14 120. DWR’s adoption of the Delta Program Revenue Bond Resolutions violated
15 CEQA. Thus, the Court cannot provide DWR the relief it requests to validate DWR’s authority
16 to pledge revenues from the Delta Program for the repayment of the Delta Program Revenue
17 Bonds.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Lack of Specificity)**

20 121. Sacramento County re-alleges and incorporates by reference paragraphs 1-120
21 above as though set forth fully herein.

22 122. As a separate Seventh Affirmative Defense, Sacramento County alleges that the
23 Delta Program Revenue Bond Resolutions fail to specify the statutory requirement that the costs
24 of the environmental review, planning, design, construction, and mitigation required for the
25 construction, operation, and maintenance of the Delta Program facilities, as well as full mitigation
26 of property tax or assessments levied by local governments or special districts for land used in the
27 construction, location, mitigation, or operation of the Delta Program facilities, must be fully paid
28 for by persons or entities that contract to receive water from the SWP and the federal CVP, or a

1 joint powers authority representing those entities; and fails to confirm that repayment of the
2 bonds will not use revenues obtained in a manner inconsistent with the California Constitution
3 from property taxes levied without a public vote. This Court cannot validate DWR’s authority to
4 pledge revenues from the Delta Program for the repayment of the Delta Program Revenue Bonds,
5 because DWR has failed to ensure that specified revenues can be collected for repayment of
6 bonds in a manner consistent with the California Constitution, and because such relief would
7 eliminate the public’s opportunity to challenge bonds issued for any amount as a violation of
8 Propositions 13, 26, or 218.

9 123. The Resolution states that DWR “shall charge and collect amounts under the
10 Water Supply Contracts sufficient to return the costs of the Delta Program for which Bonds have
11 been authenticated and delivered” (Resolution, § 805.) The Complaint further states that
12 “the amount of bonds which may be executed, authenticated and delivered under this Resolution
13 is *not limited*.” (Complaint, ¶ 48, emphasis added.)

14 124. Existing SWP Water Supply Contracts rely on property taxes, among other
15 revenue sources, to repay the costs of revenue bonds for construction of units of the “project” as
16 defined by the Central Valley Project Act, Water Code section 11100 et seq. The Water Supply
17 Contracts, and state law, require that property taxes be increased if a SWP contractor fails to
18 otherwise provide adequate payment under Water Supply Contracts. (Water Code § 11652 [SWP
19 contractors “shall, whenever necessary, levy upon all property in the state agency not exempt
20 from taxation, a tax or assessment sufficient to provide for all payments under the contract”].)

21 125. The California Constitution, as amended by Propositions 13, 26, and 218, places
22 limits on applicable increases in property taxes, including requirements of a public vote. (Cal.
23 Const., art. XIII A, § 1(a); Cal. Const., art. XIII C, § 2(d); Cal. Const., art. XIII D, § 3.)
24 Specifically, the California Constitution prohibits the imposition of ad valorem property taxes
25 greater than 1 percent of the value of the property without a public vote.

26 126. DWR’s Delta Program Revenue Bond Resolutions do not specify the amount of
27 revenues to be collected, and therefore do not limit DWR’s ability to impose charges on SWP
28 contractors that exceed their otherwise available revenues (a situation that could occur if, for

1 example, revenues decline from decreased water usage due to conservation, or economic
2 instability resulting from widespread nonpayment of water bills by ratepayers, such as occurred
3 during the Great Recession and is now occurring as a result of the COVID-19 pandemic). Under
4 these circumstances, it is entirely foreseeable that SWP contractors would be required to levy
5 assessments on real property within their service area that exceed 1 percent of the assessed value
6 of such property in order to satisfy DWR's revenue bond debt.

7 127. DWR's Complaint seeks to obligate SWP contractors to levy such future property
8 taxes to repay Delta Tunnel facility bonds of an unlimited amount without assured compliance
9 with the California Constitution. Specifically, two-thirds of the voters in each of the SWP Water
10 Contractor service areas that seek to impose property taxes in excess of 1 percent of the assessed
11 value of property would have to approve such an imposition in an election of any property tax
12 subject to the constitutional voting requirement. However, if the Court were to grant DWR the
13 relief it requests, voters in SWP water contractor service areas would be precluded from
14 challenging the costs of paying for the Delta Program, even if their local water purveyor
15 increased property taxes above 1 percent of the assessed value of their property without a public
16 vote. Indeed, under the SWP contracts, and Delta Program Revenue Bond Resolutions, such a tax
17 increase is reasonably foreseeable, if not inevitable, because the contractors obligated to repay the
18 charges DWR imposes are expressly required to levy property taxes to repay SWP facility bonds.

19 128. This Court cannot provide DWR with the requested confirmation of authority to
20 pledge revenues from and apply the proceeds of the Delta Program Revenue Bonds without
21 assurances that the revenues can be collected in a manner consistent with the California
22 Constitution or that a property tax assessment resulting from DWR's imposition of Delta Program
23 Revenue Bond charges on SWP contractors can be challenged.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Lack of Specificity)**

26 129. Sacramento County re-alleges and incorporates by reference paragraphs 1-128
27 above as though set forth fully herein.

28 130. As a separate Eighth Affirmative Defense, Sacramento County alleges that DWR

1 has failed to comply with Water Code section 11701 by omitting from the Delta Program
2 Revenue Bond Resolutions any estimate of the cost of the Delta Program or any estimate of the
3 amount to be raised by the Delta Program Revenue Bonds or other sources. Because DWR seeks
4 to construct the Delta Program as a “unit” of the CVP, it is required pursuant to Water Code
5 section 11701 to “prepare preliminary costs estimates, an estimate of the amount required to be
6 raised for those purposes by the issuance of bonds, and statement of the probable amount of
7 money, property, materials, or labor, if any, to be contributed from other sources in aid thereof,”
8 and to “adopt a resolution . . . authorizing the issuance of bonds for the purpose of obtaining
9 funds in an amount not in excess of that estimated to be required for those purposes.” While
10 DWR acknowledges this statutory obligation in its Complaint (see Complaint, ¶¶ 45, 50, 52, 58),
11 DWR does not comply with the mandate by including any such estimates, but rather merely
12 parrots the statute in the recitals of its adopted Resolution: “the Department hereby adopts this
13 Resolution . . . authorizing the issuance of revenue bonds for the purpose of obtaining funds in an
14 amount not in excess of that estimated to be required for [the carrying out of the Delta
15 Program]” (Complaint, ¶ 52.) The assurance DWR provided in the Resolution that it “will
16 commence the acquisition and construction phase, if any, of the Delta Program *only after all*
17 *conditions precedent to such acquisition and construction established by law* have been satisfied”
18 (emphasis added), is not sufficient justification for its failure to provide the specified estimates in
19 accordance with the law. (Complaint, ¶ 53.)

20 131. DWR’s adoption of the Delta Program Revenue Bond Resolutions violated Water
21 Code section 11701, and thus the Court cannot provide DWR the relief it requests to validate
22 DWR’s authority to adopt and approve the Delta Program Revenue Bond Resolutions, nor to
23 pledge revenues for repayment of the Delta Program Revenue Bonds pursuant to the Delta
24 Program Revenue Bond Resolutions.

25 **NINTH AFFIRMATIVE DEFENSE**

26 **(Reservation of Defense)**

27 132. Sacramento County re-alleges and incorporates by reference paragraphs 1-131
28 above as though set forth fully herein.

1 133. Sacramento County reserves all other defenses that may potentially become
2 available as a result of information developed during the case.

3 **PRAYER**

4 WHEREFORE, Sacramento County prays as follows:

5 A. That DWR's proposed authority to construct the Delta Program as a "unit" of the
6 CVP not be validated.

7 B. For a determination that it is premature for DWR to request, or for this Court to
8 adjudge, validation of revenue bonds to finance capital costs for the Delta Program, DWR's
9 resolutions adopted in connection with those bonds, and the pledge of revenues for their
10 repayment.

11 C. That DWR take nothing by its Complaint.

12 D. That facts and law as alleged herein by Sacramento County be determined as
13 alleged in favor of Sacramento County.

14 E. If and to the extent a judgment of validation is entered, Sacramento County
15 requests that such Judgment be limited in scope, and against validation, with an affirmative
16 determination as to the legal and factual issues set forth herein, in favor of Sacramento County.

17 F. The Court deny DWR's request for an order for costs incurred herein.

18 G. That Sacramento County be awarded costs and reasonable attorney's fees as
19 authorized by Code of Civil Procedure section 1021.5 and/or to the extent otherwise allowed by
20 any provision of California statutory law or any common law doctrine recognized in California.

21 H. Such other and further relief as the Court may deem just and proper.

22
23 SOMACH SIMMONS & DUNN

24 DATED: October 29, 2020

25 By Kelley M. Taber
26 Aaron A. Ferguson
27 Kelley M. Taber
28 Michelle E. Chester, Attorneys for Defendants
COUNTY OF SACRAMENTO and
SACRAMENTO COUNTY WATER
AGENCY

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PROOF OF SERVICE
(State of California)

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On October 29, 2020, I served the following document(s):

**COUNTY OF SACRAMENTO AND SACRAMENTO COUNTY WATER
AGENCY’S ANSWER TO COMPLAINT**

XX BY MAIL: On all parties in said action listed below, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

 BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by-email or electronic transmission, I caused the document(s) to be sent from e-mail address mbracha@somachlaw.com to the persons at the e-mail addressed listed in the Service List. I did not receive, within a reasonable time after the transmission, an electronic message or other indication the transmission was unsuccessful.

 BY CAUSING TO BE PERSONALLY DELIVERED: By causing to be personally delivered a true copy thereof to the person and at the address set forth below.

 BY CERTIFIED-MAIL, RETURN RECEIPT REQUESTED: On the parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

 BY OVERNIGHT DELIVERY SERVICE: Via Federal Express addressed to the person at the address set forth below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on
October 29, 2020, at Sacramento, California.


Michelle Bracha