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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF SACRAMENTO

FILE BY FAX

21 CALIFORNIA DEPARTMENT OF WATER
22 RESOURCES,

23 Plaintiff,

24 v.

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

Defendants;

Case No.: 34-2020-00283112-CU-MC-GDS

**VERIFIED RESPONSE AND ANSWER TO
COMPLAINT FOR VALIDATION**

Department: 31
Judge: Hon. Gerrit Wood
Complaint Filed: August 6, 2020

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1 **INTRODUCTION**

2 To protect their interests and preserve their claims and rights of action, defendant interested
3 parties County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of
4 Solano, County of Yolo, County of Butte, County of Plumas, and Plumas County Flood Control and
5 Water Conservation District (collectively, the “Public Agencies”) submit this Response and Answer to
6 the Complaint for Validation (“Complaint”) filed by Plaintiff California Department of Water Resources
7 (“DWR”), as follows:

8 **RESPONSE TO THE COMPLAINT FOR VALIDATION**

9 1. The Public Agencies are a regionally diverse coalition including six counties and two
10 county water resource management and flood control agencies. They collectively span an area that
11 includes major watersheds serving the State Water Project (the Feather River and Sacramento River), its
12 keystone water storage and hydroelectric facilities (Lake Oroville and Oroville Dam), and most of the
13 area comprising the Sacramento-San Joaquin Delta, as well as groundwater basins and other surface
14 water sources. In addition to serving downstream uses, these water resources are indispensable to
15 agriculture, the economy and the environment in much of northern and central California.

16 2. The Public Agencies would be adversely affected by, and are united in opposing, DWR’s
17 premature and prejudicial attempt in this action to impose unbounded revenue bond obligations under
18 the Central Valley Project Act (“CVP Act,” Wat. Code, §§ 11100, *et seq.*) to finance an extraordinarily
19 risky multibillion-dollar Delta tunnel facility, known in DWR’s current iteration as the Delta
20 Conveyance Project (“Delta tunnel” or “Delta conveyance”). Binding debt obligations for DWR’s
21 proposed Delta conveyance, which is not a “unit” of the existing State Water Project (SWP) approved
22 by California’s voters in 1960, would fundamentally transform the SWP to the detriment of the Public
23 Agencies, their constituents, and water users and consumers throughout California.

24 3. Although DWR’s Complaint euphemistically refers to funding a “Delta Program,” even
25 referencing legislative efforts to *protect* the Delta in the 2009 Delta Reform Act (Complaint, ¶ 20), the
26 bond resolutions DWR seeks to validate are not open to financing non-conveyance approaches such as
27 “improved regional supplies, conservation, and water use efficiency,” or efforts to “reduce reliance on
28 the Delta in meeting California’s future water supply needs,” even though those steps are required under

1 the same Act. (Wat. Code, § 85021.) Under DWR’s General Bond Resolution, the only “Delta Program”
2 DWR seeks to validate for bond financing, covering environmental review, planning, engineering,
3 design, acquisition, construction, and maintenance, refers to “facilities for the conveyance of water in,
4 about and through the Sacramento-San Joaquin Delta, subject to such further specification thereof as the
5 Department in its discretion may adopt.” (Complaint, Exh. 1, p. 3 [§ 101].)

6 4. As exemplified by California voters’ defeat of the Peripheral Canal in 1982 (Proposition
7 9), the existing SWP system does not include that earlier-proposed Delta conveyance, or any
8 subsequently proposed Delta conveyance. Whether to fund and pursue a Delta conveyance, and the
9 consequences of doing so for taxpayers, ratepayers, and the environment, have long been among the
10 most contentious subjects in the SWP’s history, and have also been at the center of pending disputes
11 over proposed amendments to DWR’s long-term contracts with its 29 state water contractors.

12 5. DWR’s Complaint seeks prompt judicial confirmation of revenue bond resolutions for its
13 “Delta Program” even though it only commenced environmental review of its proposed single-tunnel
14 Delta Conveyance Project on January 15, 2020 (Complaint, ¶ 26). That incomplete review follows
15 recent unsuccessful attempts by DWR to secure financing and legal permission to proceed with other
16 configurations of a Delta conveyance. Amid criticism from the Public Agencies, other government
17 agencies, and members of the public that DWR’s twin-tunnel Bay Delta Conservation Plan would
18 neither protect the Bay-Delta nor provide a lawful conservation plan, DWR shifted to, and later
19 approved, a revised twin-tunnel project, California WaterFix, in 2017, for which it attempted to validate
20 revenue bond resolutions. With litigation challenges to California WaterFix by the Public Agencies and
21 others still pending, DWR, facing waning support for California WaterFix, again changed course in
22 2019, rescinding its approval decisions and Environmental Impact Report certification for California
23 WaterFix, as well as the revenue bond resolutions it had sought to validate to facilitate that conveyance
24 project.

25 6. Along with other requested actions enumerated in its prayer for relief (Complaint, ¶¶ 89-
26 94), DWR seeks here to validate, and foreclose any issues that could have been raised in defense, as to at
27 least the following:

28 (1) confirmation of its authority under Water Code section 11260 to “acquire and construct Delta

1 conveyance facilities as a unit” of the State Water Project, “such as the facilities under review in the
2 Delta program” (Complaint, ¶ 92(d)), apparently without regard to the will of California’s voters or to
3 other statutory, constitutional, or contractual constraints (Complaint, ¶¶ 83-88);

4 (2) issuance of binding revenue bonds DWR has authorized to finance capital costs of DWR’s
5 “Delta Program,” defined in its General Bond Resolution to exclude financing of non-conveyance
6 options (Complaint, ¶¶ 80-82, 92(e), Exh. 1, p. 3 [§ 101]);

7 (3) “each of the recitals, findings, determination, and terms therein” in three bond resolutions
8 spanning more than 70 pages (Complaint, ¶ 92(a), Exh. 103); and

9 (4) the pledge of revenues for repayment of the Delta Program’s binding debt (Complaint, ¶¶ 80,
10 92(f)), which DWR apparently assumes it can “charge and collect” under SWP contracts without regard
11 to whether contractors, much less taxpayers or ratepayers, consent to these costs or would benefit from a
12 Delta conveyance (Complaint, Exh. 1, p. 25 [§ 805].)

13 7. DWR strains to insulate issues of its “authority” from virtually any conceivable issue
14 surrounding the “legality or adequacy” of the binding debt it seeks to facilitate and validate through this
15 action (Complaint, ¶ 22), including several highly foreseeable defenses addressed further below
16 (Complaint, ¶¶ 30-35, 83-88). However, the relief sought in DWR’s Complaint belies its own benign
17 characterizations, as does the extraordinary breadth of the bond resolutions it seeks to validate. Whether
18 another agency in a different validation action might have requested narrower relief, or confined its
19 resolutions to cover only a bounded set of preliminary costs, is immaterial to the instruments DWR
20 seeks to validate here, which define the *res* of this validation action.

21 8. The relief requested by DWR could force unwilling Californians to cover a virtual blank
22 check for Delta tunnel debt, even though DWR has yet to conduct any rigorous and comprehensive
23 analysis of the Delta Conveyance Project’s financial feasibility. DWR’s three bond resolutions place no
24 cap on expected billions in tunnel bond debts under the referenced “Delta Program,” whose costs remain
25 entirely unquantified and unlimited in the Complaint. The Complaint and supporting exhibits do not
26 provide even the preliminary cost estimates required under Water Code section 11701 for the Delta
27 conveyance sought for Central Valley Project Act financing under this “Delta Program.” However, an
28 analysis prepared and reported by the Delta Conveyance Design and Construction Authority (DCA) in

1 August 2020, referenced and cited by DWR and several SWP Contractors, made a preliminary cost
2 estimate for the Delta Conveyance Project of *\$15.9 billion* in 2020 dollars.

3 9. DCA recognized that its initial \$15.9 billion calculation is only preliminary, and that
4 actual costs for the Delta Conveyance Project may well far exceed that figure. Public comments have
5 already criticized this figure as “very low-ball,” because among other factors, its \$400 million estimate
6 for mitigation appears underinclusive, and because it does not fully include costs that may compound
7 further over time. Even if it proves accurate, however, the \$15.9 billion figure for the single-tunnel Delta
8 Conveyance Project compares to the preliminary \$16 billion estimate DWR provided in 2017 for the
9 twin-tunnel California WaterFix (approximately \$16.99 billion in 2020 dollars adjusted for inflation).
10 The Delta conveyance, bond financing for which DWR seeks to facilitate in this action continues to lack
11 any comprehensive financing plan, or even a reliable preliminary statement of such a plan. DWR also
12 lacks clear commitments by project beneficiaries to fully cover project costs. Nonetheless, DWR seeks
13 to promptly validate its resolutions without placing any upper limit on the debt they may impose.

14 10. DWR’s bond resolutions sought for validation provide no clear and enforceable off-ramp
15 against DWR’s binding debt for a Delta conveyance. For example:

16 (1) Section 207 of DWR’s General Bond Resolution makes such bonds “incontestable” once
17 the purchase price is paid, and specify that the validity of bond indebtedness “shall not be dependent
18 upon or affected in any way” by the following:

19 (A) the proceedings taken or to be taken by the Department for the acquisition, construction or
20 completion of the Delta Program, or (B) any contracts made by the Department in connection
21 therewith, or (C) the failure on the part of the Department to complete the Delta Program or to
22 maintain the same or to make all necessary improvements thereto or replacements thereof or any
23 part thereof, or (D) the acquisition or maintenance by the Department of all rights, licenses or
24 permits necessary for the operation of the Delta Program.

25 (2) Section 805 of DWR’s General Bond Resolution provides that DWR “shall charge and
26 collect amounts under the Water Supply Contracts sufficient to return the costs of the Delta Program for
27 which Bonds have been authenticated and delivered without regard to whether or not the Department is
28 able to construct, acquire or operate any Delta Program facilities.”

(3) Section 807 of DWR’s General Bond Resolution provides that DWR “shall not agree to
any amendment to the Water Supply Contracts which would materially adversely affect the security of
the Bonds.”

1 (4) Section 808 provides that DWR “shall take all action necessary to obtain all licenses and
2 permits needed for the acquisition, construction or operation of the Delta Program.”

3 11. In a September 11, 2017 letter to DWR’s Chief Counsel and the General Counsel for the
4 California Natural Resources Agency, members of three organizations (Planning and Conservation
5 League, Pacific Coast Federation of Fisherman’s Associations, and Sierra Club/California) described
6 several extreme impacts from DWR’s then-current attempt to validate its later-rescinded 2017 bond
7 resolutions for California WaterFix:

- 8 • “Seventy years of bond financing debt in the billions of dollars, subjecting ratepayers and
9 property tax pay back without a vote”;
- 10 • “Contracts with private interests in a project that heretofore has been a project contracting
11 with public water agencies”;
- 12 • “The eligibility of these purposes and uses of state bond financing with associated
13 exemption from Proposition 13 Property Tax protections and Proposition 26 voter right protections.”

14 (*Id.* at 1, emphasis in original.)

15 12. Largely the same problems with the California WaterFix bond resolutions that prompted
16 these concerns in September 2017 letter are again present in the August 2020 bond resolutions for the
17 Delta Program DWR now seeks to validate. Several of the most problematic provisions in DWR’s
18 August 2020 resolution-- including General Bond Resolution sections 207, 805, 807 and 808 cited
19 above--repeat the same mistakes that prompted earlier criticism of the 2017 resolutions.

20 13. DWR is still negotiating contract amendments and awaiting participation decisions from
21 numerous SWP contractors, and still does not know the extent, if any, of federal contribution to costs of
22 the proposed Delta conveyance. Nonetheless DWR, desperate to manufacture financial and bureaucratic
23 momentum for its fledgling tunnel project in advance of any meaningful public review, seeks through
24 this action to promptly impose binding debt for a proposed facility that is not, and may never become,
25 part of the SWP or eligible for revenue bonds under the Central Valley Project Act. Seeking to
26 circumvent any opportunity for integrated and accountable decision-making on its proposed Delta
27 conveyance that incorporates financing and related contractual issues, DWR through this action asserts
28 virtually limitless power to impose debt and require repayment after making perfunctory recitals of

1 necessity. That attempted power grab vastly exceeds DWR’s lawful authority and cannot be validated.

2 14. Continuing uncertainty as to financial commitments from both SWP contractors and
3 those in the federal Central Valley Project, if any, are of even greater concern in view of the September
4 2017 Final Audit of the Department of Interior’s Office of Inspector General, entitled *The Bureau of*
5 *Reclamation Was Not Transparent in its Financial Participation in the Bay Delta Conservation Plan*.
6 The report found that the Bureau “did not fully disclose to Congress and other stakeholders the \$84.8
7 million cost of its participation in the BDCP efforts, including its subsidizing of the Federal Central
8 Valley Project (“CVP”) water contractors’ share of BDCP costs.” (*Id.* at 1.) Noting that construction of a
9 Delta conveyance would “depend substantially upon reaching agreements with SWP and CVP water
10 contractors to pay for these facilities, as current State law requires,” the report expressed concern that
11 “the absence of transparency displayed by USBR during the planning phase of the BDCP will be
12 perpetuated in the future.”

13 15. DWR’s validation complaint must be dismissed as premature. Essential details of the
14 conveyance-focused Delta Program and its financing remain undefined, unapproved, or both, and the
15 procedure for bond repayment is vague and confusing at best. The outcome of pending administrative
16 proceedings, federal decision-making, and stakeholder financing decisions could fundamentally change,
17 or undermine, the ability of DWR’s Delta conveyance to lawfully operate, even though its anticipated
18 revenue is the source of security for bond payments. (Complaint, Exh. 1, p. 24 [§ 802].)

19 16. DWR’s premature rush to validate its bond resolutions is also prejudicially disconnected
20 from consideration of other matters to which they are inextricably intertwined. Those include, but are
21 not limited to: (1) DWR’s pending environmental review and decision-making on the underlying Delta
22 Conveyance Project; (2) pending Delta conveyance contract amendments, which DWR proposed in an
23 April 2020 Agreement in Principle (AIP) and still await environmental review, decision-making, and
24 possible further negotiation; and (3) two additional sets of SWP contract amendments DWR purports to
25 have authorized (referenced by DWR as the “contract extension” and “water management”
26 amendments). The latter two sets of contract amendments, the subject of pending litigation challenges,
27 are also likely to affect whether, and under what circumstances, if any, DWR may lawfully impose
28 revenue bond debt to support its proposed Delta conveyance. Validation of DWR’s bond resolutions

1 would thus ignore DWR’s longstanding recognition that it could not rely on Central Valley Project
2 revenue bonds for the Delta tunnels in the absence of amendments to SWP contracts.

3 17. Should the Court nonetheless reach a judgment on the merits of DWR’s validation action,
4 it must invalidate rather than validate DWR’s revenue bond resolutions. The sweeping debt power
5 sought by DWR exceeds its authority under the Central Valley Project Act and other laws. DWR’s
6 determination of necessity lacks required analysis of lawfulness and financial feasibility. DWR Delta
7 Program is not part of the existing State Water Project, and DWR’s proposed conveyance cannot
8 lawfully qualify as an additional “unit” eligible for revenue bonds.

9 18. The bond validation sought by DWR would prejudice disposition of remaining agency
10 proceedings on the compliance of the Delta conveyance with legal and regulatory requirements and
11 compromise the integrity of pending proceedings on environmental review and proposed Delta
12 conveyance contract amendments. Validating DWR’s bond resolutions, and thereby confirming DWR’s
13 power to impose tunnel debt, would place prejudicial financial and bureaucratic pressure on decision-
14 makers to waive or ignore restrictions that would interfere with the conveyance referenced in the bond
15 resolutions. The scale of this debt, without any established upper limit, could also threaten the
16 viability of the existing State Water Project approved by California’s voters, undermining DWR’s
17 ability to meet its mandatory priorities as project manager under the Burns-Porter Act, among other
18 duties. DWR’s bond resolutions fail to ensure timely enforcement of numerous state laws, including
19 the California Environmental Quality Act (CEQA), Pub. Resources Code, §§ 21000, et seq.), the
20 Delta Reform Act of 2009, Water Code §§ 85000, et seq., and other state laws protecting the Delta,
21 areas of origin, and water rights. Pledging revenue for likely billions in uncapped debt to finance the
22 conveyance referenced in DWR’s bond resolutions raises statutory, contractual, and even constitutional
23 concerns, as detailed further below. Unbounded and irrevocable debt for a risky new transformation of
24 the existing SWP, imposed without requiring consent or even limiting payment to beneficiaries, would
25 create enormous new risks to taxpayers, ratepayers, and SWP contractors and run contrary to the will of
26 California’s voters, who have not approved the Delta tunnel or any of its precursors.

27 **The Delta Conveyance Project’s Ineligibility for Revenue Bonds Under the CVP Act**
28 **Lack of Legislative and Voter Authorization.**

1 19. DWR’s request for bond validation is grounded in a foundational error. DWR erroneously
2 assumes that the Delta conveyance can qualify as one or more “units” provided for in the Central Valley
3 Project Act and meet the Act’s legal requirements for revenue bonds, thereby authorizing DWR to issue
4 revenue bonds to carry out any of the “objects and purposes” of the Act. (Complaint, ¶¶ 38, 77-83, 90;
5 see also Wat. Code, §§ 11260, 11700.)

6 20. The California Central Valley Project Act, originally enacted in 1933 (Water Code, §§
7 11100, *et seq.*), defined no specific Delta facilities. In 1951, the State of California enacted Water Code
8 Section 11260 (amended 1956, 1957, and 1959), which added certain features to the previously enacted
9 Central Valley Project authorizations. Section 11260 named the Feather River and Sacramento-San
10 Joaquin Delta Diversion projects as units of the Central Valley Project.

11 21. The 1959 amendment mentioned facilities for the Feather River and Sacramento-San
12 Joaquin Delta Diversion Projects. (Wat. Code, § 11260.) The amendment refers to two reports produced
13 in 1951 and 1955. The 1951 “*Report on Feasibility of Feather River Project and Sacramento-San*
14 *Joaquin Delta Diversion Projects Proposed as Features of the California Water Plan*” describes only
15 aqueduct diversions. In the 1951 report, no facilities in, peripheral to, or under the Delta are described
16 for Delta conveyance. A 1955 report, “*Financing and Constructing the Feather River Project,*”
17 *referenced a “Delta Cross Channel”* alignment that was never constructed and described only through-
18 Delta flow of waters derived from the Feather River Project.

19 22. In the Burns-Porter Act of 1959, approved by California voters in 1960, the Legislature
20 added Water Code Sections 12930 *et. seq.*, which authorized the construction and funding of portions of
21 the Central Valley Project Act, including the Feather River and Sacramento-San Joaquin Delta diversion
22 facilities referenced above. Section 12934 (d) specified which facilities were authorized to be
23 funded/built and included in subsection (d)(3) “... and appurtenant facilities in the Sacramento-San
24 Joaquin Delta for ... transfer across the Delta ... and related functions.” The Act contains no reference
25 to either a peripheral canal or a tunnel facility with intakes in the north Delta. No other California statute
26 authorizes either a peripheral canal or the conveyance system referenced by DWR in the Delta Program
27 or Delta Conveyance Project.

28 23. In 1980 the State of California enacted SB 200, which sought to add Section 11255 (and

1 others) to the Water Code. Section 11255 specified that the Central Valley Project would include “the
2 units authorized under this section ...” and under subsection (a) listed “A peripheral canal unit ...”
3 While it remained in effect, SB 200 authorized the selling of bonds to fund, and the construction of, a
4 peripheral canal.

5 24. California’s voters rejected the proposed peripheral canal in the 1982 referendum vote on
6 Proposition 9. In doing so, the voters of California rescinded SB 200 (and thus sections 11255 *et. seq.*).
7 That vote revoked the specific authority granted to DWR to both build and fund via state bonds the
8 peripheral canal “unit” of the Central Valley Project. The Delta Conveyance Project is a permutation of
9 the peripheral canal, and like its predecessor, lacks legal authority to build the project or to fund it with
10 state-issued revenue bonds under the Central Valley Project Act. The court cannot, therefore, validate
11 the sale of bonds to fund the Delta conveyance.

12 25. In a November 7, 2007 letter to Lois Wolk, Chair of the Assembly Committee on Water,
13 Parks and Wildlife, Delta Vision Blue Ribbon Task Force Chair Phil Isenberg responded to an inquiry
14 about whether the California Attorney General had issued an opinion on DWR’s legal authority to build
15 a peripheral canal. He attached a June 21, 1984 advice letter from then-Attorney General John Van De
16 Kamp addressing DWR’s legal authority to construct a Delta conveyance facility. Mr. Isenberg noted
17 that the Attorney General’s advice letter “appears to call in question the Department’s position that it has
18 the legal authority to build a Peripheral Canal,” and suggests instead that “the Department lacks the legal
19 authority to build an isolated water conveyance facility that does not rely on existing Delta channels.”

20 26. The Delta Stewardship Council determined in 2015 that it would have to amend the Delta
21 Plan to develop conveyance and restoration policies, and also evaluate Petition Facilities as a covered
22 action for its conformance with the Delta Plan. The status of the Delta Plan also remains unresolved as it
23 relates to DWR’s proposed Delta conveyance. As proposed to this Court for validation, DWR’s bond
24 resolutions seeking to secure financing for Delta conveyance lack legislative as well as voter
25 authorization.

26 **Lack of Contract Authorization**

27 27. The validation sought in DWR’s Complaint would violate express limitations in State
28 Water Project contracts, ignoring DWR’s long-recognized inability to issue revenue bonds for the

1 proposed Delta tunnels under its existing State Water Project contracts, and circumventing concerns
2 raised by the previously-recognized need for contract amendments subject to requirements of public
3 participation and still-unfinished environmental review. DWR has also perpetuated and failed to
4 overcome repeated piecemealing of decision-making on Delta conveyance project financing from
5 several sets of challenged and pending contract amendments directly bearing on the project's inability to
6 lawfully qualify for revenue bond financing under the Central Valley Project Act.

7 28. DWR's proposed Delta conveyance cannot be deemed part of the State Water Project in
8 the absence of amendments to existing State Water Project contracts. Without extensions, SWP
9 contracts would expire between 2035 and 2042. In addition, SWP contracts placed specific limitations
10 on the water system facilities eligible for Central Valley Project revenue bonds. (See, e.g., Articles 1(cc)
11 and 1(hh)(8) of State Water Project contracts.) Without contract amendments, as well as other actions,
12 a new Delta conveyance facility, such as DWR's proposed Delta Conveyance Project, would not be
13 eligible for bonds under that Act. California's voters defeated Proposition 9 in 1982, and water system
14 facilities as referenced in the project contracts did not, and still do not, include a peripheral canal or
15 permutations of that proposed conveyance.

16 29. An October 2011 Legislative Analyst Office (LAO) Report, *Potential Funding*
17 *Alternatives for the Bay Delta Conservation Plan Planning Process*, stated that "[f]unding BDCP
18 implementation" would "require amendment of long-term water supply contracts between DWR, the
19 Bureau of Reclamation, and the contractors in order to provide the funding mechanism." (*Id.* at 5.) This
20 report also listed revenue bonds as one of the "currently infeasible" funding mechanisms, because
21 revenue bonds "require a clearly defined funding source before they can be sold." (*Id.* at 8.)

22 30. When discussing revenue bonds in connection with BDCP, DWR's bond counsel earlier
23 concluded that without contract amendments, BDCP was "not on the list of approved projects that are
24 eligible for funding, including through bond financing." (Letter from Jake Campos, STIFEL, to Mary
25 Lou Cotton, SWPCA at 4 (March 19, 2014; see also MWD PRA Document 00000484-SWC Financing
26 DHCCP 9-7-12.)

27 31. In September 2014, staff at the Metropolitan Water District acknowledged that proposed
28 SWP contract amendments are a necessary step in financing BDCP. *See* MWD, Special Committee on

1 Bay-Delta Presentation Re Review Status of BDCP Cost Allocation Discussions (September 23, 2014).
2 In a September 23, 2013 report, Kern County Water Agency also referenced the need for a contract
3 amendment to finance BDCP.

4 32. In March 2014, a Morgan Stanley report concluded that “Clearly, in order to finance the
5 substantial costs associated with CM1 in the BDCP, the extension of these contracts is essential to allow
6 for the amortization of financing payments over a long period of time.”

7 33. Like BDCP, California WaterFix could not obtain financing through revenue bonds
8 without a contract amendment. November 23, 2013 and April 1, 2014 briefings of State Water
9 Contractors to DHCCP’s SWP Cost Allocation Working Group, for example, concluded that California
10 WaterFix financing options would require contract amendments.

11 34. In April 2013, DWR initiated a public negotiation process for extension of SWP
12 contracts. Contract extensions achieved through this process would be for another 50 years, through the
13 end of 2085. The initial phase of the process reached an “agreement in principle” in mid-2014 including
14 some of the State Water Contractors, but not Public Agencies Butte County and Plumas County Flood
15 Control and Water Conservation District. DWR sought delay in addressing BDCP financing until a
16 subsequent contract amendment process could be undertaken after Plumas and Butte Counties raised
17 concerns about costs from BDCP-related matters in the contract extension scope. DWR responded that
18 this subject would be better addressed in a separate negotiation for a BDCP/DHCCP amendment. A
19 separate SWP contract amendments process begun in December 2014 for the proposed BDCP (later
20 California WaterFix) was suspended in February 2015. In comments made during DWR’s review of
21 DWR’s proposed 50-year contract extension, members of the public expressed concerns that changes in
22 project contracts would be used to facilitate the Delta tunnels, and that ratepayers could end up bearing
23 additional costs. Santa Barbara County raised concerns about the consequences of contract amendments
24 for taxpayers and ratepayers, which DWR did not directly address.

25 35. In July 2017, DWR separately certified the Final EIR and issued its Notice of
26 Determination recording final approval of its then-current twin-tunnel Delta conveyance project,
27 designated as California WaterFix (also referenced as BDCP Alternative 4A). The same day, DWR
28 approved three resolutions purporting to authorize revenue bond obligations for payment of California

1 WaterFix. On the same day, but after executing the Notice of Determination for its California WaterFix
2 approvals, DWR adopted Project Order No. 40, which purported to add California WaterFix facilities
3 under the Central Valley Project Act, and through that action, to the SWP. DWR did not include Project
4 Order No. 40 and the three WaterFix bond resolutions in any public administrative review, comment
5 period or public hearing prior to their adoption

6 36. In August 2017, Metropolitan Water District released a white paper entitled *Modernizing*
7 *the System: California Waterfix Finance and Cost Allocation*. MWD's white paper described
8 uncertainties remaining in federal, state and water contractor financing for the project. MWD
9 anticipated the need for water contractors to accrue finance costs on DWR revenue bonds, if DWR were
10 found to have the authority to issue them at all. MWD's paper identified DWR's proposed revenue
11 bonds as the "ultimate source" of the SWP contractors' share of the project's costs.

12 37. In May 2018, although DWR had still not responded to 2016 public comments on the
13 contract extension DEIR, DWR requested a legislative hearing required under Water Code section 147.5
14 before executing contract extension amendments. Hearings were held on DWR's proposed contract
15 amendments before the Senate Natural Resources and Water Committee (SNRWC) on July 3, 2018 and
16 the Joint Legislative and Budget Committee (JLBC) on September 11, 2018. Testimony at the
17 September 11, 2018 JLBC hearing undermined the premise of the amendments' independence from
18 DWR's proposed Delta conveyance. DWR director Karla Nemeth confirmed that DWR plans to "use
19 these amendments to finance WaterFix," and Rachel Ehlers of the Legislative Analyst's Office testified
20 that the contract extension amendments would "affect and facilitate" WaterFix. Facilitation of WaterFix
21 through contract amendments is also addressed in the testimony of Congressman McNerney and of
22 Roger Moore at the same hearing.

23 38. While SWP contract amendments were the subject of legislative proceedings during
24 2018, the Public Agencies and critics throughout California-- from Plumas County and the Delta
25 Counties Coalition to San Diego County-- criticized DWR's efforts to complete contract amendments
26 without integrated review of all DWR's proposed amendments related to a Delta conveyance, including
27 pending water management and water supply contract amendments. The Legislative Delta Caucus
28 observed that DWR's "poorly defined" amendments would have "potential adverse impacts far beyond

1 their apparent scope,” with many unknowns “regarding the extensive changes to the SWP contracts that
2 are being proposed and how the changes will impact property taxes, water rates, the fiscal integrity of
3 the SWP and General Fund.” Commentary in major newspapers criticized DWR’s lack of transparency
4 and attempts to leverage indebtedness for a Delta conveyance without adequate review and debate.

5 39. Following the 2018 legislative hearings, more than a dozen organizations sent a letter to
6 DWR in September 25, 2018, identifying changed circumstances and calling for integrated
7 environmental review of all DWR’s anticipated and interrelated contract amendments. A December 11,
8 2018 letter from the Public Agencies supported the same position. Instead, following certification of a
9 separate Final EIR, DWR finally approved the “contract extension” project on December 13, 2018.
10 DWR’s December 2018 decision-making on the contract extension amendments is the subject of
11 pending CEQA challenges in Sacramento Superior Court. (Sacramento County Superior Court Case No.
12 34-2018-00246183, Case No. 34-2019-80003047, Case No. 34-2019-80003053), as well as a direct
13 validation action brought by DWR, which the Public Agencies and others have answered and opposed
14 (Sacramento County Superior Court Case No. 34-2018-00246183).

15 40. Separately from its contract extension proceedings, DWR issued a notice to SWP
16 contractors in December 2017, confirming its desire to pursue contract amendments to revise water
17 management practices, including those pertaining to transfers and exchanges, and to address changes in
18 financial provisions related to the costs of DWR’s proposed Delta conveyance. A series of public
19 negotiation sessions followed in early 2018 addressing these subjects. In June 2018, following up on
20 these negotiations, DWR issued a non-binding Agreement in Principle (2018 AIP) for the project. DWR
21 determined that preparation of an EIR was necessary for the project.

22 41. On July 13, 2018, DWR published a Notice of Preparation (NOP) for a project identified
23 as the *State Water Project Contract Amendment for Water Management and California WaterFix*.
24 Scoping comments submitted in response to the NOP expressed concerns about piecemealing of matters
25 separately pending in other proceedings on California WaterFix and the contract extension amendments,
26 among other subjects.

27 42. In October 2018, DWR published its *State Water Project Contract Amendment for*
28 *Water Management and California WaterFix Draft Environmental Impact Report (DEIR)*. DWR opened

1 the public comment period on the DEIR on October 26, 2018, and closed that period on January 9, 2019.
2 DWR also held public meetings on November 16, 2018 and November 30, 2018. The Public Agencies
3 and other commenters submitted detailed EIR comments. Commenters expressed concerns about
4 deficiencies in DWR's DEIR, piecemealing of its impact assessment, and refusal to provide an
5 integrated analysis of all DWR's proposed contract amendments.

6 43. On February 12, 2019, while DWR's litigation remained pending in Sacramento County
7 Superior Court in the coordinated actions challenging California WaterFix (JCCP No. 4942), California
8 Governor Gavin Newsom announced in his State-of-the-State speech that he did not support the twin-
9 tunnel California WaterFix project, but did support a single-tunnel Delta conveyance.

10 44. On April 9, 2019, Governor Newsom issued Executive Order N-10-19, which directed
11 the California Natural Resources Agency, California Environmental Protection Agency, and California
12 Department of Food and Agriculture, in consultation with the Department of Finance, to prepare a water
13 resilience portfolio that meets the needs of California's communities, economy, and environment
14 through the 21st century. The Executive Order included planning for a single-tunnel approach to Delta
15 conveyance as one of eight subjects for these agencies to consider in a new inventory and assessment,
16 along with other subjects, such as "[e]xisting demand for water on a statewide and regional basis and
17 available water supply to address this demand," and "existing water quality of our aquifers, rivers, lakes
18 and beaches."

19 45. On May 2, 2019, DWR rescinded the Notice of Determination for its California WaterFix
20 project and the CEQA approval documents referenced in its Notice of Determination. The same day,
21 DWR set aside its certification of the California WaterFix Final EIR, as well as pending permitting
22 applications pertaining to California WaterFix. On May 7, 2019, DWR adopted a general bond
23 resolution rescinding all three California WaterFix bond resolutions it had sought to validate in the
24 WaterFix coordinated actions. On May 9, 2019, DWR's counsel sent a note to opposing counsel in these
25 actions, clarifying that it also considers Project Order No. 40 to be "rescinded" due to DWR's rescission
26 of all its California WaterFix project approvals.

27 46. In a public meeting with SWP water contractors on May 20, 2019, DWR indicated it
28 would revise the 2018 AIP to remove provisions pertaining to cost allocation for California WaterFix,

1 while leaving other provisions unchanged. The same day, DWR released a draft working document for
2 public discussion, entitled *Draft Agreement in Principle for the SWP Water Supply Contract Amendment*
3 *for Water Management* (2019 AIP). The 2019 AIP revised the 2018 AIP to delete provisions pertaining
4 to California WaterFix, but retained the earlier AIP’s water management provisions pertaining to
5 transfers and exchanges of water within the SWP service area.

6 47. In June 2019, after effectively obtaining the relief they had sought against DWR, the
7 Public Agencies and others challenging DWR’s WaterFix decision-making requested dismissal of their
8 writ petitions in the WaterFix coordinated actions (JCCP No. 4942). In July 2019, DWR likewise
9 requested dismissal of its California WaterFix validation action.

10 48. In February 2020, DWR released its *State Water Project Water Supply Contracts for*
11 *Water Management Partially Recirculated Draft Environmental Impact Report* (RDEIR), which
12 acknowledged that negotiations were underway on “a possible contract amendment for cost allocation in
13 anticipation of a single tunnel project,” but declined to provide integrated analysis of the role of those
14 pending contract amendments, as well as DWR’s challenged contract extension amendments (*Id.* at 6-2.)
15 Sacramento County and other commenters criticized DWR’s August 2020 Final EIR for the water
16 management project, noting DWR’s piecemealing of contract amendment analysis and refusal to
17 provide cumulative analysis of project impacts in connection with the effects of that conveyance project,
18 contrary to CEQA’s requirement to do so for both “current” and “probable future projects.” Nonetheless,
19 DWR approved its separate water management contract amendment project without providing that
20 analysis. DWR’s August 2020 decision-making on that project is the subject of a pending CEQA
21 challenge in Sacramento Superior Court. (Sacramento County Superior Court, Case No.34-2020-
22 80003492).

23 49. On April 30, 2020, drawing from SWP contractor proposals in a series of offers starting
24 in July 2019, DWR agreed to a separate *Agreement in Principle for the State Water Project Water*
25 *Supply Contract Amendment on a Delta Conveyance Project* (2020 AIP). The same day, DWR released
26 a Final White Paper conveying how DWR intended to address the accounting and administration of
27 water attributable to the Delta conveyance facility. DWR’s January 2020 Delta Conveyance Project
28 NOP anticipates that any such proposed contract modifications supporting the conveyance would be

1 assessed in DWR’s forthcoming Delta Conveyance Project EIR “*as part of that proposed project*” (*Id.* at
2 6 (emphasis added).) That review remains pending, and DWR has not yet prepared even a Draft EIR for
3 the pending conveyance project and related contract amendments. Nonetheless, DWR failed to conduct
4 any review of the role of those further amendments proposed in the April 2020 AIP before approving the
5 three bond resolutions DWR seeks to validate. Section 807 of DWR’s General Bond Resolution, if
6 validated, would prejudice the outcome of that pending process, foreclosing DWR from agreeing to “any
7 amendment to the Water Supply Contracts which would materially adversely affect the security” of the
8 Delta conveyance revenue bonds.

9 **DWR’s Proposed Bond Validation Would Violate the Central Valley Project Act**

10 50. DWR’s complaint and attached resolutions rely upon the Central Valley Project Act as the
11 sole source of DWR’s statutory authority to issue the revenue bonds referenced in the resolutions.
12 However, the validation DWR seeks here would violate the Central Valley Project Act in at least the
13 following ways noted herein.

14 51. The Delta Conveyance Project, which would not generate revenue, if at all, until long after
15 the commencement of construction, would not be able to honor agreements needed with other agencies
16 under Water Code § 11139 “to repay any money or the value of any rights of way, labor, materials, or
17 other property advanced or contributed,” since repayment could not be timely made “only out of the
18 revenues received from the operation of the project.”

19 52. The Delta Conveyance Project fails to qualify as a “unit” of the project under Water Code
20 § 11260.

21 53. The Delta Conveyance Project cannot qualify as an “additional unit” in furtherance of the
22 Central Valley Project’s objectives, within the meaning of Water Code § 11290.

23 54. DWR’s bond resolutions, which purport to allow issuance of the revenue bonds even if the
24 project is not constructed, are inconsistent with DWR’s duties under Water Code § 11451, which
25 requires DWR to have “full charge and control of the construction, operation and maintenance of the
26 project and the collection of all rates, charges and revenues from it.”

27 55. DWR’s bond resolutions, which seek to create binding obligations regardless of whether
28 investments in the Delta Conveyance Project prove to be lawful or financially viable, would impair the

1 accomplishment of the Central Valley Project’s purposes and objects, and cannot be deemed to be
2 “necessary, convenient or expedient” for their achievement under Water Code § 11454.

3 56. Delta Conveyance Project bonding authority cannot be validated under Water Code §
4 11500 as claimed by DWR, since that provision merely lists potential powers in interactions with the
5 United States, which has neither finally approved nor funded California WaterFix, and since it has no
6 bearing on the validity of WaterFix financing.

7 57. Funds from Delta conveyance revenue bonds would not serve the “objects and purposes”
8 of the Central Valley Project Act under Water Code § 11700. Bond validation would allow DWR to
9 create and enforce obligations that would remain incontestable even if the conveyance were never built,
10 or expenditures on it proved to be unlawful, harmful to the public interest, or both.

11 58. DWR’s bond resolutions fail to demonstrate under Water Code § 11701 that “the public
12 interest and necessity” require authorization and issuance of Delta conveyance revenue bonds. These
13 resolutions fail to accurately disclose or address the absence of voter and legislative approval for DWR’s
14 proposed Delta conveyance, as well as its financial infeasibility, absence of a legally authorized
15 financing plan, violation of laws precluding the availability of assumed sources of funding, lack of
16 necessity, and failure to serve the public interest.

17 59. DWR excluded preliminary cost estimates from its Complaint and three bond resolutions
18 sought for validation Water Code § 11701, and did not provide mandatory analysis needed to comply
19 with this provision, including the need to accurately account for the “probable amount of money,
20 property, materials or labor” to be contributed from other sources under Water Code § 11701.

21 60. Bonds sought for authorization under DWR’s bond resolutions do not qualify as “Central
22 Valley Project revenue bonds” under Water Code § 11705, since the referenced resolutions do not
23 accurately disclose the failure of DWR’s proposed Delta conveyance to so qualify in the absence of
24 changes in the law, amendments to SWP contracts, or both, and in the absence of a project order
25 lawfully adding such a conveyance to the SWP>

26 61. The relief DWR seeks by way of its Complaint would, if granted, violate Water Code §§
27 11720 and 11721 because the proposed financing does not rely exclusively on revenues lawfully and
28 properly received from operation of the proposed Delta conveyance. Water Code §§ 11720 and 11721

1 require DWR to rely exclusively on such revenues in the financing arrangements it establishes for the
2 proposed project. Because the Bond Resolutions do not rely exclusively on revenues lawfully and
3 validly received from operation of the Delta Conveyance Project, DWR lacks authority to adopt the
4 Bond Resolutions or to issue bonds pursuant to those resolutions, and the acts of DWR alleged in the
5 Complaint therefore exceed DWR's legal authority and are ultra vires. DWR's authorization of bonds
6 may also place additional strain on revenues for operation, maintenance and repair of existing facilities,
7 in violation of Water Code § 11722.

8 62. DWR fails to comply with Water Code § 11818, which requires that the Central Valley
9 Project revenue fund "shall at all times be kept segregated and set apart from other funds," since the
10 procedures outlined in sections 601 and 602 of DWR's general bond resolution (DWR complaint, Exh.
11 A, §§ 601, 602) are insufficient to maintain segregation in the foreseeable circumstance in which
12 funding shortfalls occur and pressures develop to call on taxpayers or ratepayers of SWP contractors to
13 make up for funding deficits.

14 **ANSWER TO COMPLAINT FOR VALIDATION**

15 **Nature of the Action**

16 1. Answering Paragraph 1 of the Complaint, Public Agencies admit that the Complaint
17 purports to commence a validation action under Code Civ. Proc. § 860 et seq. and Gov. Code § 17700,
18 that the Complaint purports to describe a "Delta Program," and that DWR seeks a judgment confirming
19 the validity of revenue bond financing DWR claims to have authorized for review, planning, engineering
20 and design, acquisition, and construction of "water conveyance facilities in, about, and through the
21 Sacramento-San Joaquin Delta...." Other than as expressly admitted, Public Agencies deny each and every
22 allegation of Paragraph 1.

23 2. Answering Paragraph 2 of the Complaint, Public Agencies admit that on January 15, 2020,
24 DWR issued a Notice of Preparation (NOP) initiating environmental review under CEQA entitled *Notice*
25 *of Preparation of Environmental Impact Report for the Delta Conveyance Project*, and allege that this
26 NOP speaks for its itself, as do the provisions of Public Resources Code, §§ 21000, et seq. and 14 Cal.
27 Code Regs., § 15802. Other than as expressly admitted, Public Agencies deny each and every allegation
28 of Paragraph 2.

1 8. Answering Paragraph 8 of the Complaint, Public Agencies admit the allegations therein.

2 9. Answering Paragraph 9 of the Complaint, Public Agencies admit that they are interested
3 in disputing DWR's attempts in this action to establish the validity of revenue bonds described in and
4 referenced in three resolutions attached to the Complaint. Except as expressly so admitted, Public
5 Agencies lack sufficient knowledge to admit or deny the allegations of Paragraph 9 and, on that basis,
6 deny each and every remaining allegation of Paragraph 9, and allege the following facts concerning
7 these answering Public Agencies:

8 **COUNTY OF SAN JOAQUIN** is a political subdivision of the State of California. Two-thirds
9 of the legal Delta is located within San Joaquin County, and the Delta comprises over one-third of San
10 Joaquin County's total area. Approximately 167,000 people live in the San Joaquin County portion of
11 the Delta, and those cities and communities rely in significant part on the Delta for their water supplies.
12 The Delta supports a \$5.2 billion annual agricultural industry, and approximately forty percent (40%) of
13 those farms are located in San Joaquin County. A large portion of the Delta's \$750 million recreational
14 economy is centered in San Joaquin County, encompassing, among other enterprises and activities,
15 innumerable privately-owned marinas, public and private boat launch facilities, recreational facilities for
16 fishing, tent camping, RV camping, hiking and picnicking, and many lodging establishments and
17 restaurants that contribute to the Delta's recreational economy.

18 **COUNTY OF CONTRA COSTA** is, and at all times mentioned herein was, a political
19 subdivision of the State of California. Contra Costa County is vitally and beneficially interested in this
20 action's facilitation of the Delta Conveyance project, which if approved and constructed will adversely
21 affect the Sacramento-San Joaquin Delta. The eastern portion of Contra Costa County is located within
22 the Delta and a portion of it borders Old River. Contra Costa County's entire northern boundary borders
23 San Pablo and Suisun Bays, the Carquinez Strait, New York Slough, and the western San Joaquin River.
24 Contra Costa County is home to over one million people. Persons who live and work within Contra
25 Costa County rely on the Delta as a source of drinking water, and as a place to live, work, and recreate.

26 **CONTRA COSTA COUNTY WATER AGENCY** ("CCC Water Agency") is, and at all times
27 mentioned herein was, a body politic and corporate organized and existing under the Contra Costa
28 County Water Agency Act (Stats. 1957, ch. 518, West's Wat. Code Appen., Ch. 80). CCC Water
Agency is vitally and beneficially interested in this action's facilitation of the Delta Conveyance Project,
which if approved and constructed will affect the Sacramento-San Joaquin Delta and will affect water

1 quality and beneficial uses of water within CCC Water Agency’s jurisdiction. CCC Water Agency is
2 empowered to do all things necessary to ensure the availability of water for beneficial uses within the
3 agency’s jurisdiction, including but not limited to preventing waste, salinity intrusion, and interference
4 of diminution of the natural flow of rivers of streams within the agency’s jurisdiction. (West’s Wat.
5 Code Appen., § 80-11(2), (5).) CCC Water Agency is authorized to participate in litigation to protect
6 “the ownership, use or supply of water, water rights or water service within or without the agency which
7 may be used or useful for any purpose within the agency.” (West’s Wat. Code Appen., § 80-11(5).)
8 CCC Water Agency’s special statutory interests will be directly and indirectly impacted by the Delta
9 Conveyance Project’s adverse environmental and economic impacts.

10 **COUNTY OF SOLANO** is, and at all times mentioned herein was, a political subdivision of the
11 State of California. Solano County is vitally and beneficially interested in this action’s facilitation of the
12 Delta Conveyance Project, which if approved and constructed will adversely affect the Sacramento-San
13 Joaquin Delta. The eastern portion of Solano County, including the Cache Slough region, is located
14 within the Delta. Solano County’s southern boundary borders San Pablo and Suisun Bays, the
15 Carquinez Strait, and the Sacramento River. Solano County is home to more than 400,000 people, as
16 well as a thriving agricultural economy. Persons who live and work within Solano County rely on the
17 Delta as a source of drinking and irrigation water, and as a place to live, work, and recreate. Solano
18 County’s interests, as well as the interests of the residents, landowners, farmers, and local districts
19 within its boundaries, will be directly and indirectly impacted by the Delta Conveyance Project’s
20 adverse environmental and economic impacts.

21 **COUNTY OF YOLO** is, and at all times mentioned herein was, a political subdivision of the
22 State of California. Yolo County is vitally and beneficially interested in this action’s facilitation of the
23 Delta Conveyance Project, which if approved and constructed, will affect the environment, economy,
24 and public welfare within the Sacramento-San Joaquin Delta. A substantial portion of Yolo County lies
25 within the Delta, including part of the City of West Sacramento, the town of Clarksburg and its
26 surrounding farms and vineyards, and the Yolo Bypass. Persons who live and work within Yolo County
27 depend on Delta waters for agricultural and municipal uses, as well as for commerce and recreation.
28 Delta levees protect local communities and farms and, together with other infrastructure such as roads
and bridges, sustain the agricultural heritage and economic vitality of Yolo County. The Delta

1 Conveyance project and its proposed financing will adversely impact Yolo County’s interests and the
2 interests of its residents, landowners, and local agencies, such as reclamation districts (“RDs”).

3 **COUNTY OF BUTTE** is a political subdivision of the State of California, charged by the
4 California Constitution with the duty to protect the environment and economy of the people and
5 resources within its jurisdiction, and the reasonable and beneficial uses of surface water and
6 groundwater. Butte County, governed by a five-member Board of Supervisors, provides services to
7 residents through 23 departments. Butte is also the second northernmost of 29 State Water Contractors
8 that signed and still hold long-term contracts for water deliveries with DWR. Operation of the SWP
9 affects residents and taxpayers within Butte County.

10 **COUNTY OF PLUMAS** is a political subdivision of the State of California, charged by the
11 California constitution with the duty to protect the environment and the economy of the people and
12 resources within its jurisdiction. Plumas County is located predominantly in the Feather River
13 watershed, upstream of DWR’s Oroville project. The SWP also has project reservoirs inside Plumas
14 County, including Antelope Dam and Lake, Grizzly Valley Dam and Lake Davis, and Frenchman Dam
15 and Lake. The Lake Davis unit of the SWP supplies water to the Plumas County Flood Control and
16 Water Conservation District, one of the SWP contractors. Operation of the SWP affects residents and
17 taxpayers within Plumas County.

18 **PLUMAS COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT** is
19 governed by the Plumas County Board of Supervisors, is a special law water district created by the State
20 Legislature in 1959 through Act 5964 and is the northernmost State Water Contractor.

21 **Jurisdiction and Venue**

22 10. Answering Paragraph 10 of the Complaint, Paragraph 10 sets forth legal conclusions
23 and/or statements of law as to which no response is required. Public Agencies allege that the provisions
24 of the validation statute, Government Code section 17700, and Code of Civil Procedure section 862
25 speak for themselves. To the extent Paragraph 10 may be deemed to contain statements of fact, Public
26 Agencies deny all such allegations.

27 11. Answering Paragraph 11, Public Agencies allege that Code of Civil Procedure section
28 867 speaks for itself. To the extent Paragraph 11 may be deemed to contain statements of fact, Public
Agencies deny all such allegations.

1 12. Answering Paragraph 12, Public Agencies admit the allegations therein.

2 13. Answering Paragraph 13 of the Complaint, Paragraph 13 sets forth legal conclusions
3 and/or statements of law as to which no response is required. Public Agencies allege that Rule 3.300 of
4 the California Rules of Court speaks for itself, and that insufficient information presently exists to fully
5 apply its provisions to this action. Public Agencies deny that the referenced action is the only other
6 proceeding having facts, parties, and/or issues potentially bearing on the issues in this action. Public
7 Agencies further allege that Sacramento County Superior Court Case No. 34-17-00215965 is a now-
8 dismissed action that was not adjudicated on the merits prior to its dismissal. To the extent Paragraph
9 13 may be deemed to contain statements of fact, Public Agencies deny all such allegations.

10 **The Project**

11 14. Answering Paragraph 14 of the Complaint, Public Agencies admit that DWR operates,
12 manages and oversees facilities which store, transport and deliver water to urban and agricultural water
13 agencies throughout the State; and that DWR has since approximately 1960 planned portions of the
14 State Water Project, a system of water storage and transportation and power general facilities, referenced
15 in DWR's Complaint as "the 'Project.'" Except as expressly so admitted, Public Agencies lack
16 sufficient knowledge to admit or deny the allegations of Paragraph 14 and, on that basis, deny each and
17 every remaining allegation of Paragraph 14.

18 15. Answering Paragraph 15 of the Complaint, Public Agencies admit that DWR is
19 authorized to carry out specified duties and functions in relation to the State Water Project by the
20 Central Valley Project Act (Cal. Water Code §§ 11100 et seq.) (the "CVP Act") and the Burns-Porter
21 Act (Cal. Water Code §§ 12930 et seq.). Except as expressly so admitted, Public Agencies lack
22 sufficient knowledge to admit or deny the allegations of Paragraph 15 and, on that basis, deny each and
23 every remaining allegation of Paragraph 15. Public Agencies allege that the cited provisions of the CVP
24 Act and Burns-Porter Act speak for themselves.

25 16. Answering Paragraph 16 of the Complaint, Paragraph 16 sets forth legal conclusions as to
26 which no response is required. Public Agencies allege that the provisions of the Central Valley Project
27 Act speak for themselves. To the extent Paragraph 16 may be deemed to contain statements of fact,
28 Public Agencies deny all such allegations.

1 17. Answering Paragraph 17 of the Complaint, Public Agencies admit the allegations therein.

2 18. Answering Paragraph 18 of the Complaint, Public Agencies admit the allegations therein.

3 19. Answering Paragraph 19 of the Complaint, Public Agencies admit the allegations therein.

4 **The Delta Program**

5 20. Answering Paragraph 20 of the Complaint, Public Agencies allege that the provisions of
6 the Delta Reform Act of 2009, including Water Code section 85002, speak for themselves.

7 21. Answering Paragraph 21 of the Complaint, Public Agencies allege that the provisions of
8 the Delta Reform Act of 2009, including Water Code section 85001(c), speak for themselves.

9 22. Answering Paragraph 22 of the Complaint, Public Agencies allege that the provisions of
10 the Delta Reform Act of 2009, including Water Code sections 85004(a) and 85004(b), speak for
11 themselves.

12 23. Answering Paragraph 23 of the Complaint, Public Agencies allege that the provisions of
13 the Delta Reform Act of 2009, including Water Code section 85020(f), speak for themselves.

14 24. Answering Paragraph 24 of the Complaint, Public Agencies allege that the provisions of
15 the Delta Reform Act of 2009 provide the best evidence of its “statutory framework,” and that Paragraph
16 24 sets forth legal conclusions as to which no response is required. To the extent Paragraph 24 may be
17 deemed to contain statements of fact, Public Agencies deny all such allegations.

18 25. Answering Paragraph 25 of the Complaint, Public Agencies admit that Gavin Newsom
19 became Governor of California during January 2019. Public Agencies allege that any specific directions
20 subsequently provided by Governor Newsom to “responsible state agencies” speak for themselves, and
21 that Paragraph 24 sets forth legal conclusions as to which no response is required. Except as admitted, to
22 the extent Paragraph 25 may be deemed to contain statements of fact, Public Agencies deny all such
23 allegations.

24 26. Answering Paragraph 26 of the Complaint, Public Agencies admit that on January 15,
25 2020, DWR issued a Notice of Preparation (NOP) initiating environmental review under CEQA entitled
26 *Notice of Preparation of Environmental Impact Report for the Delta Conveyance Project*. Public
27 Agencies allege that this NOP speaks for its itself, as do the provisions of CEQA (Public Resources
28 Code, §§ 21000, et seq.) and 14 Cal. Code Regs., § 15126.6; and that Paragraph 26 sets forth legal
conclusions as to which no response is required. Other than as expressly admitted, to the extent that

1 Paragraph 25 may be deemed to contain statements of fact, Public Agencies deny each and every
2 allegation of Paragraph 26.

3 27. Answering Paragraph 27 of the Complaint, Public Agencies allege that the Complaint in
4 its entirety, including its three attached resolutions, provide the best evidence of what DWR authorized
5 in its resolutions and what relief it seeks in this action, and that Paragraph 27 sets forth legal conclusions
6 as to which no response is required. Other than as expressly admitted, to the extent that Paragraph 27
7 may be deemed to contain statements of fact, Public Agencies deny each and every allegation of
8 Paragraph 27.

9 28. Answering Paragraph 28 of the Complaint, Public Agencies admit that the Delta
10 Conveyance Project, referenced in DWR's January 15, 2020, NOP, remains the subject of pending
11 environmental review, and that DWR has conceded that preparation of an Environmental Impact Report,
12 project approval by DWR, and compliance with "all applicable statutory and regulatory conditions
13 (including CEQA compliance)" would be required to proceed with that project. Public Agencies allege
14 that the three resolutions attached to the Complaint provide the best evidence of what DWR claims to
15 have authorized, and that Paragraph 28 sets forth legal conclusions as to which no response is required.
16 Other than as expressly admitted, to the extent that Paragraph 28 may be deemed to contain statements
17 of fact, Public Agencies deny each and every allegation of Paragraph 28.

18 29. Answering Paragraph 29 of the Complaint, Public Agencies allege that the provisions of
19 the Central Valley Project Act speak for themselves, that the three resolutions attached to the Complaint
20 provide the best evidence of what DWR claims to have authorized in them, and that the Complaint,
21 including its prayer for relief, provides the best evidence of what DWR seeks in this validation action.
22 Other than as expressly alleged, Public Agencies deny each and every allegation of Paragraph 29.

23 30. Answering Paragraph 30 of the Complaint, Public Agencies allege that Water Code
24 section 11260 speaks for itself, and that the Complaint, including its prayer for relief and attached
25 resolutions, provides the best evidence of what DWR seeks in this validation action. Other than as
26 expressly alleged, Public Agencies deny each and every allegation of Paragraph 30.

27 31. Answering Paragraph 31 of the Complaint, Public Agencies allege that the provisions of
28 the Central Valley Project Act (including Water Code section 11260) and the provisions of the Burns-
Porter Act (including Water Code section 12930) speak for themselves, and that the Complaint,
including its prayer for relief and attached resolutions, provides the best evidence of what DWR seeks in

1 this validation action. Other than as expressly alleged, Public Agencies deny each and every allegation
2 of Paragraph 30.

3 32. Answering Paragraph 32 of the Complaint, Public Agencies allege that the Complaint,
4 including its prayer for relief and attached resolutions, provides the best evidence of what DWR seeks in
5 this validation action. Other than as expressly alleged, Public Agencies deny each and every allegation
6 of Paragraph 32.

7 33. Answering Paragraph 33 of the Complaint, Public Agencies allege that the provisions of
8 CEQA and 14 Cal. Code Regs. § 15378, subd. (b)(4) speak for themselves. Other than as expressly
9 alleged, Public Agencies deny each and every allegation of Paragraph 33.

10 34. Answering Paragraph 34 of the Complaint, Public Agencies allege that 14 Cal. Code
11 Regs. § 15061, subd. (b)(4) speaks for itself. Other than as expressly alleged, Public Agencies deny each
12 and every allegation of Paragraph 34.

13 35. Answering Paragraph 35 of the Complaint, Public Agencies allege that the CEQA
14 Guidelines, including 14 Cal. Code Regs. § 15352, speak for themselves. Other than as expressly
15 alleged, Public Agencies deny each and every allegation of Paragraph 35.

16 **Statutory Authority for Financing of the Delta Program**

17 **DWR Authority with Respect to Project Facilities**

18 36. Answering Paragraph 36 of the Complaint, Public Agencies allege that the Central Valley
19 Project Act speaks for itself, and that Paragraph 36 sets forth legal conclusions as to which no response
20 is required. Other than as expressly alleged, to the extent that Paragraph 36 may be deemed to contain
21 statements of fact, Public Agencies deny each and every allegation of Paragraph 36.

22 37. Answering Paragraph 37 of the Complaint, Public Agencies allege that the provisions of
23 Central Valley Project Act, including Water Code sections 11200 through 11295, speak for themselves.
24 To the extent Paragraph 37 may be deemed to contain statements of fact and characterizations of
25 applicable law, Public Agencies deny all such allegations.

26 38. Answering Paragraph 38 of the Complaint, Public Agencies allege that Water Code
27 section 11260 speaks for itself. Other than as expressly alleged, Public Agencies deny each and every
28 allegation of Paragraph 38, including its assumption that section 11260 authorizes DWR to include
“conveyance facilities such as those to be reviewed and evaluated in the Delta Program” as one or more
of the units “provided for in this chapter.”

1 39. Answering Paragraph 39 of the Complaint, Public Agencies allege that the provisions of
2 the Central Valley Project Act (including Water Code section 11454), the Burns-Porter Act (including
3 Water Code section 12931), and the California Supreme Court’s decisions in *Warne v. Harkness* (1963)
4 60 Cal.2d 579 and *Metropolitan Water District v. Marquardt* (1963) 59 Cal.2d 159, speak for
5 themselves. To the extent Paragraph 39 may be deemed to contain statements of fact and
6 characterizations of applicable law, Public Agencies deny all such allegations.

7 40. Answering Paragraph 40 of the Complaint, Public Agencies allege that the provisions of
8 the Central Valley Project Act, including Water Code section 11126, speak for themselves. To the extent
9 Paragraph 40 may be deemed to contain statements of fact and characterizations of applicable law,
10 Public Agencies deny all such allegations.

11 41. Answering Paragraph 41 of the Complaint, Public Agencies admit that under the Central
12 Valley Project Act confers certain powers with respect to State Water Project facilities and alleges that
13 the provisions of that Act speak for themselves. Public Agencies deny that under the Central Valley
14 Project Act or any other lawful enactment, DWR has the power to authorize the review, planning, design
15 and engineering, acquisition, and construction of the “Delta Program” as referenced in the Complaint.

DWR Authority to Issue Revenue Bonds

16 42. Answering Paragraph 42 of the Complaint, Public Agencies admit that the Central Valley
17 Project Act authorizes issuance of revenue bonds to pay the capital costs of certain State Water Project
18 facilities as referenced in that Act, the Burns-Porter Act, and the Governor’s Contracting Principles that
19 informed voter approval of the Burns-Porter Act in 1960. Public Agencies deny that the Central Valley
20 Project Act, or any other lawful enactment, authorizes issuance of revenue bonds for the “Delta
21 Program” or “Delta Conveyance Project” as referenced in DWR’s Complaint and attached resolutions.

22 43. Answering Paragraph 43 of the Complaint, Public Agencies allege that Water Code
23 section 11700 speaks for itself. Public Agencies deny that this provision, or any other lawful enactment,
24 authorizes issuance of revenue bonds for “Delta Program Planning Costs” or “Delta Program
25 Construction Costs” as referenced in DWR’s Complaint and attached resolutions.

26 44. Answering Paragraph 44 of the Complaint, Public Agencies allege that Water Code
27 section 11761 speaks for itself. Public Agencies deny that this provision, or any other lawful enactment,
28 authorizes issuance of revenue bonds for “Delta Program Planning Costs” or “Delta Program
Construction Costs” as referenced in DWR’s Complaint and attached resolutions. Public Agencies deny

1 that DWR met the requirements for issuance of revenue bonds for these costs under Water Code section
2 11761 or provided even the preliminary determination of costs required under that section.

3 45. Answering Paragraph 45 of the Complaint, Public Agencies allege that Water Code
4 section 11701 speaks for itself. Public Agencies deny that the Resolution made a lawful showing of
5 “public interest and necessity,” deny that proceeding with the “Delta Program” or “Delta Conveyance
6 Project” would carry out the “objects and purposes” of the Central Valley Project Act, and deny that
7 DWR provided even the preliminary cost estimates required under section 11701. Except as expressly
8 alleged and denied, Public Agencies lack sufficient knowledge to admit or deny the allegations of
9 Paragraph 45 and, on that basis, deny each and every remaining allegation of Paragraph 45.

10 **Delta Program Revenue Bond Financing**

11 **Delta Program General Bond Resolution and Delta Program Revenue Bonds**

12 46. Answering Paragraph 46 of the Complaint, Public Agencies admit the allegations therein.

13 47. Answering Paragraph 47 of the Complaint, Public Agencies allege that the General Bond
14 Resolution attached as Exhibit 1 to the Complaint speaks for itself, including the definition of “Delta
15 Program” as referenced in Paragraph 47. To the extent Paragraph 47 may be deemed to include any
16 factual allegations other than statements appearing on the face of this General Bond Resolution, Public
17 Agencies lack sufficient knowledge to admit or deny the allegations of Paragraph 47 and, on that basis,
18 deny each and every remaining allegation of Paragraph 47.

19 48. Answering Paragraph 48 of the Complaint, Public Agencies allege that section 203 of the
20 General Bond Resolution speaks for itself. Public Agencies deny that this section, or any other
21 enactment, lawfully authorized the issuance of “Delta Program Revenue Bonds” as referenced in the
22 Complaint.

23 49. Answering Paragraph 49 of the Complaint, Public Agencies allege that the General Bond
24 Resolution, and Water Code section 11701, speak for themselves. Public Agencies deny that the General
25 Bond Resolution made a lawful showing of “public interest and necessity,” and deny that proceeding
26 with the “Delta Program” or “Delta Conveyance Project” would carry out the “objects and purposes” of
27 the Central Valley Project Act. Except as expressly alleged and denied, Public Agencies lack sufficient
28 knowledge to admit or deny the allegations of Paragraph 49 and, on that basis, deny each and every
remaining allegation of Paragraph 49.

1 50. Answering Paragraph 50 of the Complaint, Public Agencies allege that the General Bond
2 Resolution, and section 11701 of the Central Valley Project Act, speak for themselves. Public Agencies
3 admit that the General Bond Resolution conceded that DWR had not prepared “preliminary cost
4 estimates,” an “estimate of the amount required to be raised” for applicable phases of the Delta Program,
5 and “a statement of the probable amount of money, property, materials, or labor, if any, to be
6 contributed by other sources in aid thereof,” as required under section 11701. Except as expressly
7 admitted and alleged, Public Agencies lack sufficient knowledge to admit or deny the allegations of
8 Paragraph 50 and, on that basis, deny each and every remaining allegation of Paragraph 50.

9 51. Answering Paragraph 51 of the Complaint, Public Agencies allege that section 204(B)(3)
10 of the General Bond Resolution speaks for itself. Public Agencies admit that in the General Bond
11 Resolution, DWR conceded that it had not provided to the Treasurer any of the cost estimates,
12 statements, and certifications listed in section 204(B)(3) of the General Bond Resolution and Paragraph
13 51 as required under Water Code section 11701. Public Agencies deny, on information and belief, that
14 the findings and determinations in the General Bond Resolution were made pursuant to and in
15 accordance with Section 11701 of the CVP Act and otherwise in accordance with the Central Valley
16 Project Act, and that fully and accurately accounted for the costs of the “Delta Program” referenced
17 therein even as a preliminary estimate.

18 52. Answering Paragraph 52 of the Complaint, Public Agencies allege that Water Code
19 section 11701 and the General Bond Resolution speak for themselves. Public Agencies deny, on
20 information and belief, that the General Bond Resolution made a lawful showing of “public interest and
21 necessity” with respect to the “Delta Program” or “Delta Conveyance Project” as referenced in the
22 General Bond Resolution.

23 53. Answering Paragraph 53 of the Complaint, Public Agencies allege that the
24 determinations made in the General Bond Resolution speak for themselves. To the extent Paragraph 53
25 may be deemed to contain statements of fact and characterizations of applicable law, Public Agencies
26 deny all such allegations.

27 54. Answering Paragraph 54 of the Complaint, Public Agencies allege that the
28 determinations made in the General Bond Resolution, including those in Section 205(B),
speak for themselves. To the extent Paragraph 54 may be deemed to contain statements of fact and
characterizations of applicable law, Public Agencies deny all such allegations.

1 55. Answering Paragraph 55 of the Complaint, Public Agencies admit the allegations therein.

2 56. Answering Paragraph 56 of the Complaint, Public Agencies allege that the provisions of
3 the First Supplemental Resolution, including its recitals and Section 1304, speak for themselves. Public
4 Agencies admit that the First Supplemental Resolution purports to authorize issuance of referenced
5 Delta Program Revenue Bonds. Except as expressly so admitted and alleged, Public Agencies lack
6 sufficient knowledge to admit or deny the allegations of Paragraph 56 and, on that basis, deny each and
7 every remaining allegation of Paragraph 56.

8 57. Answering Paragraph 57 of the Complaint, Public Agencies allege that the provisions of
9 the First Supplemental Resolution, including Section 1304, speak for themselves and require no further
10 response.

11 58. Answering Paragraph 58 of the Complaint, Public Agencies allege that the provisions of
12 the First Supplemental Resolution and Water Code section 11701 speak for themselves. Public Agencies
13 admit that in the First Supplemental Resolution, DWR concedes that it had not made the determinations
14 referenced in Paragraph 58 needed for compliance for Water Code section 11701. To the extent
15 Paragraph 58 may be deemed to contain characterizations of applicable law, or to support any inference
16 that DWR has complied with Water Code section 11701 or other laws, Public Agencies deny all such
17 allegations.

18 59. Answering Paragraph 59 of the Complaint, Public Agencies allege that the provisions of
19 the Second Supplemental Resolution, including Section 1704, speak for themselves. To the extent
20 Paragraph 59 may be deemed to contain statements of fact and characterizations of applicable law,
21 Public Agencies deny all such allegations.

22 60. Answering Paragraph 60 of the Complaint, Public Agencies allege that the provisions of
23 the Second Supplemental Resolution, including Section 1704, speak for themselves and require no
24 further response.

25 61. Answering Paragraph 61 of the Complaint, Public Agencies allege that the provisions of
26 the Second Supplemental Resolution, including Sections 204 and 205, speak for themselves. To the
27 extent Paragraph 61 may be deemed to contain statements of fact and characterizations of applicable
28 law, Public Agencies deny all such allegations.

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1 88. Answering Paragraph 88 of the Complaint, Public Agencies deny the allegations therein.

2 **Prayer for Relief**

3 89. Answering Paragraph 89 of the Complaint, Public Agencies admit that DWR prays for
4 the relief described in Paragraph 89. Except as expressly so admitted, Public Agencies lack sufficient
5 knowledge to admit or deny the allegations of Paragraph 89 and, on that basis, deny each and every
6 allegation of Paragraph 89.

7 90. Answering Paragraph 90 of the Complaint, Public Agencies admit that DWR prays for
8 the relief described in Paragraph 90. Except as expressly so admitted, Public Agencies lack sufficient
9 knowledge to admit or deny the allegations of Paragraph 90 and, on that basis, deny each and every
10 allegation of Paragraph 90.

11 91. Answering Paragraph 91 of the Complaint, Public Agencies admit that DWR prays for
12 the relief described in Paragraph 91. Except as expressly so admitted, Public Agencies deny each and
13 every allegation of Paragraph 91.

14 92. Answering Paragraph 92 of the Complaint, Public Agencies admit that DWR prays for
15 the relief described in Paragraph 92. Except as expressly so admitted, Public Agencies deny each and
16 every allegation of Paragraph 92.

17 93. Answering Paragraph 93 of the Complaint, Public Agencies admit that DWR prays for
18 the relief described in Paragraph 93. Except as expressly so admitted, Public Agencies deny each and
19 every allegation of Paragraph 93. Public Agencies deny that DWR is entitled to the relief sought in
20 Paragraph 93 or to any injunctive or other form of relief whatsoever.

21 **ADDITIONAL DEFENSES**

22 94. For their separate and additional defenses, and without admitting that they bear the
23 burden of proof or persuasion as to any such defenses, Public Agencies reallege and incorporate
24 Paragraphs 1-62 of their Response to the Complaint for Validation and Paragraphs 1-93 of their Answer
25 to Complaint for Validation as though fully set forth herein, and further allege as follows:

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1 **FIRST AFFIRMATIVE DEFENSE**

2 (Failure to State a Claim)

3 95. The Complaint, including each purported cause of action and remedy sought therein, fails
4 to allege facts sufficient to constitute a cause of action.

5 **SECOND AFFIRMATIVE DEFENSE**

6 (Prematurity/Ripeness)

7 96. DWR seeks to establish “valid, legal and binding obligations,” the validity of which all
8 others would be enjoined and restrained from challenging in the future.

9 97. The validation sought by DWR would be premature under Code of Civil Procedure
10 section 860, *et seq.*, for at least the following reasons:

11 • Essential details of the Delta conveyance for which DWR seeks to create binding
12 obligations remain undefined, unapproved, or both.

13 • The proposed procedure for bond repayment is vague, confusing, and incomplete.

14 • DWR fails to establish the amount of revenue bonds needed for the Delta
15 conveyance referenced in DWR’s bond resolutions, and fails to accurately disclose uncertainties
16 in project costs and financing and risks from default and cost overruns.

17 • A validation judgment based upon DWR’s complaint and resolutions would be
18 incapable of meeting the purpose of the validation statute (Code Civ. Proc., § 860, *et seq.*) to
19 promptly settle all questions about the validity of DWR’s action.

20 • A validation judgment based upon DWR’s complaint and resolutions would raise
21 risks of fragmented and inconsistent rulings on validity.

22 • A validation judgment based on DWR’s complaint and resolutions would
23 foreseeably and likely create prejudicial political, financial and bureaucratic momentum behind
24 the Delta Conveyance Project referenced in DWR’s bond resolutions. That prejudicial
25 momentum will prevent or discourage DWR from objectively considering and environmental
26 consequences of the project design, including the possibility of modifying the project or not
27 proceeding with the project at all, as required by CEQA and other laws. (See *Save Tara v. City*
28 *of West Hollywood* (2008) 45 Cal.4th 116, 135 [Allowing “bureaucratic and financial

1 momentum” to build up behind a project provides “a strong incentive to ignore environmental
2 concerns.”].)

3 • Due to unresolved issues in pending judicial and administrative proceedings, even
4 if DWR ultimately receives the other required approvals, its conveyance project and closely related
5 financing may have to be, or should be, substantially modified, or rejected outright to comply with
6 CEQA other requirements of law, such as the Delta Reform Act, the public trust doctrine, and state
7 and federal laws protecting endangered species and water quality

8 **THIRD AFFIRMATIVE DEFENSE**

9 (Misrepresentation of Project Role)

10 98. The determinations that the contract amendments are “necessary and desirable” under
11 Water Code 11160 and “necessary, convenient or expedient” under Water Code 11454 are irreparably
12 flawed. DWR’s determination of consistency with these provisions in the resolutions attached to the
13 complaint misrepresents their relationship to the purposes and objects of the Central Valley Project Act
14 and Burns-Porter Act. This includes, but is not limited to, the failure of DWR in these determinations to
15 accurately disclose or address: (1) DWR’s attempt in its resolutions to impose unbounded debt
16 obligations secured by pledges of revenues to finance the pending and largely unstudied Delta
17 Conveyance Project, which would remain binding even if DWR cannot lawfully operate that project; (2)
18 DWR’s attempt in its resolutions to impose indebtedness for proposed terms, and for the financing of
19 project facilities, unavailable under existing State Water Project contracts, and whose lawfulness
20 depends in part upon the outcome of three pending judicial challenges to DWR’s proposed “contract
21 extension” amendments; (3) DWR’s attempt in its resolutions to impose indebtedness for the Delta
22 Conveyance Project upon unwilling contractors, without awaiting the outcome of forthcoming review
23 and decision-making on proposed Delta Conveyance Contract Amendments; and (4) the incompatibility
24 of DWR’s adopted resolutions with DWR’s fulfillment of its existing duties as manager and operator of
25 the SWP under the Burns-Porter Act.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 (Impairment of State Water Project Operation and Maintenance)

28 99. Water Code section 11455 requires DWR to enter into contracts, and establish prices,
rates, and charges “so as at all times to provide revenue which will afford sufficient funds to pay all

1 costs of operation and maintenance” of the works authorized therein, and. “which will provide at all
2 times sufficient funds for redemption of all bonds and payment of interest” thereon.

3 100. In approving the resolutions sought for validation in this action, DWR failed to make the
4 required demonstration of sufficient funds needed to comply with Water Code section 11455, and to
5 conduct analysis needed to support this determination. Furthermore, the resolutions--which seek to
6 impose pledges of revenues for potential billions in uncapped debt over a period of up to seven decades,
7 and are unsupported by financial feasibility analysis—would place enormous financial strains needing
8 further study on the existing SWP, violating the priority provisions of the Burns-Porter Act in Water
9 Code section 12937. The validation sought by DWR would prejudicially impair State Water Project
10 operation and maintenance, violating DWR’s Burns-Porter Act obligations and related laws in at least
11 the respects specified below.

12 101. DWR’s chief responsibilities as operator and manager of the State Water Project
13 are set forth in the Burns-Porter Act (also called the “Bond Act”), codified in the Water Code
14 following its approval by California voters in 1960. (Wat. Code, §§ 12930, *et seq.*)

15 102. The objective of the State Water Project to operate for the good of the people of
16 California was central to its approval and enactment. See P.A. Towner, *Brief History of the*
17 *Negotiation of Water Supply Contracts for the State Water Project*, presented to the California
18 Water Commission (Dec. 3, 1976). SWP contractors are required to have taxing authority. See
19 Wat. Code, § 12937 (codifying original SWP financial commitments).

20 103. Cost overruns and failure to account for risks to customers have been recurrent in
21 the State Water Project’s history. Cost estimates for the State Water Project of \$1.75 billion (the
22 amount in general obligation funds authorized under the Burns-Porter Act) have more than
23 quadrupled under the existing project contracts, notwithstanding DWR’s subsequent recognition
24 that the State Water Project cannot be completed as originally contemplated. State Water Project
25 contracts are presently set to expire for all 29 State Water Project contractors between 2035 and
26 2042.

27 104. By facilitating coverage of the Delta Conveyance Project with revenue bonds, the
28 resolutions would add major new risks to the SWP, risking addition of uncapped billions of

1 dollars of new indebtedness to the SWP. DWR failed to provide even a preliminary cost estimate
2 for the referenced “Delta Program” in its resolutions, failed to secure reliable and legally
3 required funding commitments from beneficiaries of that program, and failed to account for the
4 likelihood that much of the funding anticipated by DWR and supporting contractors will not
5 materialize, resulting in undisclosed risks for others.

6 105. The validation sought by DWR would place additional strains on the existing
7 State Water Project’s operation and maintenance, as well as its replacement reserve and
8 emergency costs, when foreseeable funding shortfalls arise and SWP contractors and their
9 customers are called upon to bear these risks. Bearing these costs may also prevent or deter other
10 investment—including investments in local and regional water resilience—likely to better
11 support the sustainable and reliable operation of the State Water Project and better meet DWR’s
12 obligations as project manager.

13 106. Validation of the resolutions, as proposed by DWR, would impair the sustainable
14 operation of the State Water Project, creating risks for millions of Californians depending upon
15 its safe, affordable and environmentally responsible operation.

16 107. In authorizing the resolutions, and in proceeding in the absence of financial
17 analysis needed to support its determinations, DWR failed to ensure that its obligations can be
18 performed consistently with its existing duties to SWP contractors, their member agencies, and
19 members of the public.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 (Validation Would Unlawfully Prejudice California Voters and Taxpayers)

22 108. The validation DWR seeks by its Complaint would prejudice California voters and
23 taxpayers in at least the following ways, precipitating constitutional conflict.

24 109. DWR’s water supply contracts provide that when contractors are unable to raise
25 sufficient funds by other means, State Water Project contractors are to levy assessments on all property
26 not otherwise exempt within a contractor’s territory. DWR has also referenced obligations under Water
27 Code section 11652 and current water supply contracts for water contractors to levy property taxes if
28 adequate payment cannot otherwise be made to cover the project’s financial requirements. (See, e.g.,

1 Paragraph 34 of the long-term contract between DWR and the Metropolitan Water District of Southern
2 California.)

3 110. The California Constitution, as amended by Propositions 13, 26, and 218, places limits on
4 applicable increases in property taxes, including requirements of a public vote. (Cal. Const., art. XIII A,
5 § 1(a); Cal. Const., art. XIII C, § 2(d); Cal. Const., art. XIII D, § 3.) Ad valorem property taxes greater
6 than 1 percent of the value of the property cannot proceed without a public vote, which would need the
7 approval of two-thirds of voters in each SWP contractor service area in which property taxes are sought
8 above that threshold. DWR, in seeking to impose irrevocable bond debt through the validation of its
9 resolutions, failed to ensure adherence to this requirement.

10 111. If State Water Project contractors are unable to raise sufficient funds to cover costs
11 associated with the Delta conveyance imposed through DWR’s bond resolutions, DWR will foreseeably
12 pressure contractors to impose property tax increases in order to address the deficit. Foreseeable
13 conflicts are likely to emerge over whether levying taxes to cover costs of the Delta tunnels are within
14 the costs of “maintaining, operating and replacing” the existing State Water Project. (*Goodman v.*
15 *County of Riverside* (1983) 140 Cal.App.3d 900, 908.) Indebtedness for the “Delta Program” as
16 referenced in DWR’s Complaint and General Bond Resolution (Complaint, Exh. 1, p. 3 [§ 101]) is not
17 within the State Water Project as approved by California’s voters in 1960, nor has it received subsequent
18 voter approval. Accordingly, Article XIII A, section 1(a) applies to that indebtedness, notwithstanding
19 DWR’s validation action.

20 112. Bond validation to finance costs of the Delta Conveyance Project, a project facing major
21 cost uncertainties and posing serious risks of substantial cost overruns, would invite conflicts over
22 whether it overrides opportunities under Propositions 13, 26 and 218 to challenge property tax increases
23 without a public vote.

24 113. Although DWR failed to include the cost estimate required under Water Code section
25 11701 in any of its resolutions sought for validation, the DCA in August 2020 provided a preliminary
26 cost estimate of \$15.9, while recognizing that actual costs may prove significantly higher. Public
27 Agencies are informed and believe, and on that basis, allege, that DWR’s adoption of said resolutions –
28 which would result in uncapped indebtedness for a Delta conveyance estimated to cost \$15.9 billion or

1 more, which California taxpayers could become liable in whole or in part – were adopted in derogation
2 of the rights of California voters under applicable statutes and constitutional requirements, including
3 without limitation Propositions 13, 26 and 218. To the extent the bond resolutions authorize debt in
4 excess of available revenue, voter approval is necessary under California Constitution Article XVI,
5 section 1.

6 114. Public Agencies are also informed and believe, and on that basis, allege, that although the
7 Delta Conveyance Project referenced in the Complaint will be among the costliest projects in California
8 history, DWR, supported by its allied Delta tunnel proponents, improperly circumvented California law
9 and procedures applicable to large-scale projects in order to avoid a vote of the Legislature on either the
10 project or the financing scheme for which DWR now seeks validation.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 (Underlying Project Not Yet Approved)

13 115. DWR inaccurately characterizes the relationship between this action and other Delta
14 Conveyance Project proceedings by suggesting that still-unresolved proceedings over that proposed
15 conveyance have no bearing on the determination of bond validity.

16 116. DWR does not clearly disclose how the outcome of unresolved administrative
17 proceedings, federal decision-making, and stakeholder financing decisions could, and almost certainly
18 will, transform the very nature of the project, or whether there is a project at all. As DWR concedes,
19 environmental review and decision-making on the Delta Conveyance Project remains to be undertaken
20 and complete. Consequently, DWR concedes it cannot ensure that any such project can lawfully proceed
21 under CEQA, the Delta Reform Act, the public trust doctrine, and state and federal laws protecting
22 endangered species, among other laws.

23 117. DWR implausibly claims authorization and issuance of revenue bonds would not be
24 “affected in any way” by the outcome of later proceedings—even if they render expenditures or debt on
25 the Delta Program unlawful.

26 118. DWR fails to disclose that the outcome of unresolved proceedings could turn project
27 facilities into stranded assets.

28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 (Validation Would Violate Delta Protection Laws)

3 119. The validation sought by DWR in its Complaint would improperly create binding
4 obligations in furtherance of a project that cannot lawfully proceed. The resolutions, if validated, would
5 entrench and exacerbate, rather than lessening, the SWP’s damaging consequences for the Delta. In
6 proceeding to final authorization of these resolutions, DWR failed to ensure that its resolutions and long-
7 term water supply contracts, over a proposed 50 additional years of operation, will be aligned with and
8 ensure the enforcement of numerous legal requirements relating to the protection of the Delta region and
9 resources. Those requirements include, but are not limited to the following:

10 A. 1959 Delta Protection Act (Wat. Code, §§ 12200, *et seq.*)

- 11 • The Legislative declaration that:

12 an adequate water supply in the Delta sufficient to maintain and expand agriculture,
13 industry, urban, and recreational development in the Delta . . . *and to provide a common
14 source of fresh water for export to areas of water deficiency* is necessary to the peace,
15 health, safety and welfare of the people of the State

16 (Wat. Code, § 12201, emphasis added.)

- 17 • The requirement of Water Code section 12205 that:

18 It is the policy of the State that the operation and management of releases from storage
19 into the Sacramento-San Joaquin Delta of water for use outside the area in which such
20 water originates *shall be integrated to the maximum extent possible in order to permit the
21 fulfillment of the objectives of this part.*

22 • The mandatory duty of DWR to integrate its “releases from storage into the [Delta] of water for
23 use outside the area in which such water originates . . . to the maximum extent possible in order to
24 permit the fulfillment of [that] objective.” (Wat. Code, §§ 12201, 12205.)

25 • DWR’s duty for “the provision of salinity control and an adequate water supply for the users of
26 water in the [Delta].” (Wat. Code, § 12202; see also, Wat. Code, § 12201.)

27 • DWR’s duty to integrate its “releases from storage into the [Delta] of water for use outside the
28 area in which such water originates . . . to the maximum extent possible in order to permit the fulfillment
of the objectives” of providing that “salinity control and an adequate water supply for the users of water
in the [Delta].” (Wat. Code, § 12202.)

- DWR’s duties under Water Code section 12204, which provides:

1 In determining the availability of water for export from the Sacramento-San Joaquin
2 Delta no water shall be exported which is necessary to meet the requirements of Sections
3 12202 and 12203 of this chapter.

4 B. 1992 Delta Protection Act (Pub. Res. Code, §§ 29700, et seq.), and related provisions.

- 5 • The declaration in in Public Resources Code sections 29701 and 29702, respectively, that:

6 [T]he Sacramento-San Joaquin Delta is a natural resource of statewide, national, and
7 international significance, containing irreplaceable resources, and it is the policy of the
8 state to recognize, *preserve, and protect* those resources of the delta for the use and
9 enjoyment of current and future generations.

10 (Wat. Code, § 29701, emphasis added.)

11 [T]he basic goals of the state for the delta are the following: (b) *Protect, maintain, and,*
12 *where possible, enhance and restore* the overall quality of the delta environment,
13 including, but not limited to, agriculture, wildlife habitat, and recreational activities.

14 (Wat. Code, § 29702, emphasis added.)

- 15 • The co-equal goals set forth in Public Resources Code section 29702, subdivision (a)

16 (also set forth in Water Code Provisions of the 2009 Delta Reform Act), which provides:

17 The Legislature further finds and declares that the basic goals of the state for the Delta
18 are the following: (a) Achieve the two coequal goals of providing a more reliable water
19 supply for California and protecting, restoring, and enhancing the Delta ecosystem. The
20 coequal goals shall be achieved in a manner that protects and enhances the unique
21 cultural, recreational, natural resource, and agricultural values of the Delta as an evolving
22 place.

23 • The duty to ensure that efforts to provide a more reliable water supply are “in a manner
24 that protects and enhances the unique cultural, recreational, natural resource, and agricultural
25 values of the Delta as an evolving place.” (Pub. Resources Code, § 29702.)

26 C. Watershed Protection Act (Wat. Code, §§ 11460, et seq.)

27 • DWR’s duty to ensure that in its “construction and operation” of “any project under the
28 provisions of this part a watershed or area wherein water originates, or an area immediately adjacent
thereto which can conveniently be supplied with water therefrom, shall not be deprived by the
department directly or indirectly of the prior right to all of the water reasonably required to adequately
supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.”

(Wat. Code, § 11460.)

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1 **EIGHTH AFFIRMATIVE DEFENSE**

2 (Validation Would Violate Delta Reform Act of 2009)

3 (Wat. Code, §§ 85000, et seq.)

4 120. The validation sought by DWR for its resolutions, which would authorize binding
5 obligations that would harm the Delta region and entrench SWP reliance on Delta exports, precipitates
6 conflict with one or more provisions of the Delta Reform Act of 2009, including but not limited to the
7 following:

8 • DWR’s duty to achieve “the coequal goals for management of the Delta” (Wat. Code, § 85020),
9 defined as “the two goals of providing a more reliable water supply for California and protecting,
10 restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that
11 protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the
12 Delta as an evolving place.” (Wat. Code, § 85054.)

13 • DWR’s duty to achieve the following objectives the Legislature has declared to be “inherent” in
14 the coequal goals for management of the Delta:

15 (a) Manage the Delta’s water and environmental resources and the water resources of the state
16 over the long term.

17 (b) Protect and enhance the unique cultural, recreational, and agricultural values of the California
18 Delta as an evolving place.

19 (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy
20 estuary and wetland ecosystem.

21 (d) Promote statewide water conservation, water use efficiency, and sustainable water use.

22 (e) Improve water quality to protect human health and the environment consistent with achieving
23 water quality objectives in the Delta.

24 (f) Improve the water conveyance system and expand statewide water storage.

25 (g) Reduce risks to people, property, and state interests in the Delta by effective emergency
26 preparedness, appropriate land uses, and investments in flood protection.

27 (h) Establish a new governance structure with the authority, responsibility, accountability,
28 scientific support, and adequate and secure funding to achieve these objectives.

(Wat. Code, § 85020.)

• DWR’s duty to follow “[t]he policy of the State of California” to “reduce reliance on the Delta in
meeting California’s future water supply needs through a statewide strategy of investing in improved

1 regional supplies, conservation, and water use efficiency.” (Wat. Code, § 85021; see also Cal. Code
2 Regs., tit. 23, § 5003) (Delta Reform Act regulations requiring reduced reliance on the Delta).

3 • DWR’s duty to ensure that “the constitutional principle of reasonable use and the public trust
4 doctrine,” which the Legislature describes as “particularly important and applicable to the Delta,” serve
5 as “the foundation of state water management policy.” (Wat. Code, § 85023.)

6 • DWR’s duty to ensure, consistently with the Delta Reform Act of 2009, that no project
7 implemented in the Delta may impair future potential for implementation of habitat restorations. (Cal.
8 Code Regs., tit. 23, § 5007.)

9 121. Under Water Code section 85320, subdivision (b), a conveyance in furtherance of
10 DWR’s Delta Program would not be eligible for public funding unless it complied with the provisions
11 listed in subdivision (b)(1) and (2), including compliance with CESA (Fish & G. Code, §§ 2800 et seq.)
12 and CEQA (Pub. Resources Code, §§ 21000 et seq.) Since DWR’s proposed Delta conveyance lacks
13 compliance with these mandatory requirements, no state funding, including revenue bonds, may be
14 issued to fund the project.

15 122. The Delta Reform Act as codified in Water Code § 85089 mandates that:

16 Construction of a new Delta conveyance facility shall not be initiated until the persons or
17 entities that contract to receive water from the State Water Project and the federal Central Valley
18 Project or a joint powers authority representing those entities have made arrangements or entered
19 into contracts to pay for both of the following:

20 (a) The costs of the environmental review, planning, design, construction, and mitigation,
21 including mitigation required pursuant to Division 13 (commencing with Section 21000
22 of the Public Resources Code) required for the construction, operation, and maintenance
23 of any new Delta water conveyance facility.

24 (b) Full mitigation of property tax or assessments levied by local governments or special
25 districts for land used in the construction, location, mitigation, or operation of new Delta
26 conveyance facilities.

27 123. The bond validation sought by DWR would effectively subsidize the Delta
28 Conveyance Project, without ensuring payment by beneficiaries required under the Delta Reform
Act. DWR’s resolutions to impose revenue bonds for the referenced Delta Program, and creation

1 of binding obligations in them, are also contrary to law because the Delta Reform Act requires that
2 the persons or entities contracting to receive water from the water projects pay all costs of
3 environmental review, planning, design, construction, and mitigation required for the construction,
4 operation, and maintenance of any new Delta water conveyance facility.

5 124. DWR cannot lawfully obtain the bond validation sought in this action prior to judicial
6 resolution of whether DWR's actions sought to be validated are lawful under the Delta Reform Act.

7 **NINTH AFFIRMATIVE DEFENSE**

8 (Validation Would Violate California Environmental Quality Act)

9 (Pub. Resources Code, § 21000, et seq.)

10 125. To the extent, if any, that violations of CEQA addressed above are not deemed
11 appropriate for consideration as part of DWR's case in chief on its validation claim, the Public Agencies
12 incorporate and separately assert them herein as affirmative defenses.

13 126. DWR's issuance of revenue bonds and creation of binding obligations in support of the
14 Delta Program referenced in the Complaint and resolutions would effectively subsidize, and give
15 unlawful bureaucratic momentum to coerce implementation of, the Delta Conveyance Project, without
16 awaiting the outcome of pending environmental review DWR has conceded to be necessary to lawfully
17 implement that project.

18 127. The resolutions committed DWR to a course of action risking significant impacts to the
19 environment, requiring compliance with CEQA prior to their final adoption. DWR, however, unlawfully
20 failed to conduct any review under CEQA before adopting the resolutions. CEQA provides that:

21 No state agency, board, or commission shall request funds, nor shall any
22 state agency, board, or commission which authorizes expenditures of
23 funds, other than funds appropriated in the Budget Act, authorize funds for
24 expenditure for any project, other than a project involving only feasibility
25 or planning studies for possible future actions which the agency, board, or
26 commission has not approved, adopted or funded, which may have a
27 significant effect on the environment unless such request or authorization
28 is accompanied by an environmental impact report.

(Pub. Resources Code, § 21002.) DWR's resolutions, which seek to establish binding and irrevocable
debt obligations covering environmental review, planning, engineering, design, acquisition, and

1 construction of DWR’s Delta Program, require far more, and commit to a riskier course of action, than
2 mere “feasibility or planning studies for possible future actions.”

3 128. “The creation of government funding mechanisms or other government fiscal activities”
4 does not qualify as a “project” for purposes of CEQA only if such mechanisms or activities “do not
5 involve any commitment to any specific project which may result in a potentially significant physical
6 impact on the environment.” (14 Cal. Code Regs., § 15378(b)(4).) DWR’s resolutions sought for
7 validation would establish binding debt obligations expressly tied to DWR’s pending plans to design and
8 build a Delta conveyance. (Complaint, Exh. 1, p. 3 [§ 101].) Although the Complaint erroneously
9 assumes that the consequences of adopting the resolutions are too speculative to “allow for meaningful
10 environmental review” (Complaint, ¶ 34), DWR had already commenced review of the proposed Delta
11 conveyance it seeks to fund through the resolutions months before adopting them.

12 129. DWR’s January 15, 2020 Delta Conveyance Project NOP includes a detailed description
13 of the project facilities and location and indicates that any contract amendments for Delta conveyance
14 will be assessed as “part of the proposed project,” (*Id.* at 6.) The NOP also states that DWR’s
15 forthcoming environmental review will be “informed by” DWR’s previous reviews of BDCP and
16 California WaterFix, which it describes as “similar” projects. (*Id.*, pp. 9-10.) No “speculation” would
17 have been needed for DWR to address the integral relationship between DWR’s commitment to the
18 resolutions sought for validation and DWR’s pending environmental review of an existing project.

19 130. DWR’s bond resolutions also make environmentally consequential commitments that
20 would escape timely review under CEQA unless addressed prior to their final adoption. For example,
21 they include advance determination under Water Code section 11260 that “the public interest and
22 necessity require the “carrying out” of the Central Valley Project Act’s objects and purposes through a
23 “Delta Program” that is expressly tied to financing of a Delta conveyance, and does not contemplate
24 financing of non-conveyance options. (Complaint, exh. 1, pp. 1, 3.)

25 131. The “incontestable” debt obligations created under Sections 207 and 805 of DWR’s
26 General Bond Resolution may well truncate or foreclose the full consideration of alternatives and
27 mitigation measures, or render them financially infeasible. These binding commitments tied to financing
28 of a Delta conveyance may well come at the expense of non-conveyance approaches to improving water

1 supply and quality, or to developing local and regional water resilience, even when needed to protect the
2 public interest or meet other requirements of law. If validated without CEQA review, they may be used
3 later to coerce SWP contractors, member agencies, their constituents, and members of the public who
4 oppose and would not benefit from the Delta conveyance.

5 132. Section 807 of DWR’s General Bond Resolution, which prohibits DWR from agreeing to
6 SWP contract amendments that would “materially adversely affect the security of the Bonds,” may
7 disable DWR from making contrary commitments in the future even where doing so would reduce
8 environmental risks or provide important public benefits. Foreclosing that flexibility would be
9 particularly ill-timed in light of DWR’s own recognition in its NOP that any Delta conveyance contract
10 amendments are to be “part of” the Delta Conveyance Project’s pending environmental review.

11 133. CEQA requires environmental review to address the “whole of the action” prior to
12 approving any individual component of the project. (14 Cal. Code Regs., § 15378.) The resolutions,
13 which seek to facilitate revenue bond financing for the Delta Conveyance Project, should have been
14 recognized by DWR as an integral component of that project and included within DWR’s still-pending
15 CEQA review. Instead, DWR prejudicially disconnected the resolutions from its pending review of the
16 Delta Conveyance Project, resulting in a shifting and inconsistent project definition, prejudicial
17 fragmentation, avoidance of timely assessment of impacts and alternatives, and unlawfully piecemealed
18 decision-making.

19 134. DWR cannot lawfully obtain the bond validation sought herein without addressing
20 whether the DWR actions sought to be validated are lawful under CEQA. Before committing to a course
21 of action requiring CEQA review, a state agency must fully consider the project’s environmental effects
22 and identify ways to avoid or reduce environmental harm, including the assessment of project
23 alternatives, the “no project” alternative, and mitigation measures. (Pub. Resources Code, §§ 21000(g),
24 21081(a)(1); 14 Cal. Code Regs., §§ 15002(a), 15126.6.) In failing to complete any environmental
25 review prior to adopting the resolutions, DWR violated CEQA’s mandatory requirements and failed its
26 essential objectives of information disclosure and informed public participation.

TENTH AFFIRMATIVE DEFENSE

(Violation of Central Valley Project Act)

135. To the extent, if any, that violations of the Central Valley Project Act addressed above are not deemed appropriate for consideration as part of DWR’s case in chief on its validation claim, the Public Agencies incorporate and separately assert them herein as affirmative defenses.

ELEVENTH AFFIRMATIVE DEFENSE

(Lack of Specificity)

136. Bond validation cannot occur due to the uncertain and vague presentation of the Complaint on the nature of the action to be validated and the scope of relief.

TWELFTH AFFIRMATIVE DEFENSE

(Estoppel)

137. Bond validation cannot occur due to estoppel. Among other things, DWR has repeatedly assured the public and the Legislature that its proposed Delta conveyance would not be financed with taxpayer money or expose California taxpayers to potential costs or liability in the event that non-taxpayer financing fails or cannot cover substantial cost overruns in the design, construction and/or operation of the Delta tunnels.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

138. Bond validation cannot occur due to waiver of grounds essential to the granting of that relief.

FOURTEENTH AFFIRMATIVE DEFENSE

(Violations of Due Process and/or Failure to Comply with Public Participation Requirements and Other Procedural Requirements under California Law)

139. Bond validation cannot be granted due to DWR’s failure to comply with the requirements of procedural due process and other applicable procedural requirements, including the opportunity for public participation. Public Agencies are informed and believe, and on that basis, allege, that DWR’s adoption of the resolutions attached to the Complaint was accomplished without complying with the statutory and regulatory requirements governing promulgation and adoption of such resolutions and/or in derogation of the due process rights of interested parties who were not allowed to participate in the

1 process.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 (Unclean Hands)

4 140. The relief sought by DWR in its complaint cannot be granted due to the doctrine of
5 unclean hands.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 (Lack of Legislative Authority)

8 141. The resolutions attached to DWR’s complaint, if validated, would place, or facilitate the
9 placement of, obligations exceeding any grant of legislative authority, or any other lawful source of
10 authorization. This includes, but is not limited to, debt obligations on water contractors exceeding any
11 grant of legislative authority, such as imposition of costs for the Delta Conveyance Project, guarantee of
12 bond payments for that project irrespective of project completion, and required assumption of the
13 obligations of defaulting participants.

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 (Lack of Contractual Authority)

16 142. The resolutions attached to DWR’s complaint, if validated, would exceed the authority
17 conferred upon DWR under one or more provisions of its existing long-term water supply contracts with
18 State Water Project contractors.

19 143. The Complaint disingenuously portrays the relief sought in this action as unaffected by
20 pending proceedings on proposed State Water Project contract amendments. Those proceedings include
21 two sets of proceedings presently under litigation challenge (addressing, respectively, proposed
22 amendments designated by DWR as “contract extension” amendments and “water management”
23 contract amendments) and an additional set of proposed Delta Conveyance contract amendments, which
24 DWR has included in an Agreement in Principle, and whose environmental review and decision-making
25 remain pending along with other components of the Delta Conveyance Project.

26 **EIGHTEENTH AFFIRMATIVE DEFENSE**

27 (Reservation of Defenses)

28 144. Certain additional defenses to the Complaint and to the purported cause of action therein
stated may be available to the Public Agencies. However, these additional defenses require further

1 discovery before they can be properly alleged. Public Agencies therefore reserve the right to assert other
2 separate and additional defenses, causes of action, and/or cross-complaints if and when they become
3 appropriate in this action.

4 **PUBLIC AGENCIES' PRAYER FOR RELIEF**

5 WHEREFORE, Public Agencies respectfully request the Court enter judgment as follows:

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

10 2. That DWR take nothing by its Complaint.

11 3. That facts and law as alleged herein by Public Agencies be determined as alleged in
12 favor of Public Agencies.

13 4. If, and to the extent a judgment of validation is entered, Public Agencies request that such
14 Judgment be limited in scope, and against validation, with an affirmative determination as to the legal and
15 factual issues set forth herein, in favor of these answering Public Agencies: County of San Joaquin,
16 County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, County
17 of Butte, County of Plumas, and Plumas County Flood Control and Water Conservation District.

18 5. That Public Agencies be awarded reasonable attorneys' fees pursuant to Code of Civil
19 Procedure section 1021.5 and/or to the extent otherwise allowed by any provision of California statutory
20 law or any common law doctrine recognized in California.

21 6. For Public Agencies' costs of suit herein. For such other and further relief as the Court may
22 deem just and proper.

23 Respectfully submitted,

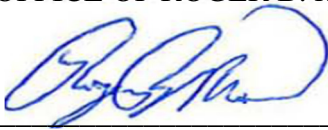
24 Dated: October 29, 2020

FREEMAN FIRM

25
26 By: 
27 THOMAS H. KEELING
28 Attorney for Public Agencies

1 Dated: October 29, 2020

LAW OFFICE OF ROGER B. MOORE

2
3 By: 

4 ROGER B. MOORE
5 Attorney for Public Agencies
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VERIFICATION

I, Roger B. Moore, am counsel of record for County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, County of Butte, County of Plumas, and Plumas County Flood Control and Water Conservation District (“Public Agencies”), parties to the foregoing Verified Response and Answer to Complaint for Validation. I sign for Public Agencies absent from the county and/or because facts contained in the Response and Answer are within the knowledge of counsel. I have read the foregoing Response and Answer and know the contents thereof. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of October, 2020, in Oakland, California.



ROGER B. MOORE

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PROOF OF SERVICE

I hereby certify that I am a citizen of the United States, over the age of eighteen years, and not a party to this action. My business address is 1818 Grand Canal Boulevard, Suite 4, Stockton, California 95207. I served the foregoing document entitled:

VERIFIED RESPONSE AND ANSWER TO COMPLAINT FOR VALIDATION

Service by United States Mail:

✓ by placing a true copy thereof enclosed in a sealed envelope or package with postage thereon fully prepaid in a box or receptacle designated by my employer for collection and processing of correspondence for mailing with the United States Postal Service, addressed as set forth below. I am readily familiar with the business practices of my employer, FREEMAN FIRM, for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence placed in the designated box or receptacle is deposited with the United States Postal Service at San Joaquin County, California, the same day in the ordinary course of business.

Attorneys for California Department of Water Resources:

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Office of the Chief Counsel
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Sacramento, California 95814

The acts described above were undertaken and completed in San Joaquin County on October 29, 2020.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Stockton, California.



TONIA M. ROBANCHO