

1 CITY OF STOCKTON
LORI ASUNCION (SBN 238240)
2 CITY ATTORNEY
425 N. El Dorado Street
3 Stockton, CA 95202-1951
Telephone: (209) 937-8333
4 Facsimile: (209) 937-8898
lori.asuncion@stocktonca.gov

5 SOMACH SIMMONS & DUNN
A Professional Corporation
6 KELLEY M. TABER (SBN 184348)
7 LOUINDA V. LACEY (SBN 275888)
500 Capitol Mall, Suite 1000
8 Sacramento, CA 95814
Telephone: (916) 446-7979
9 Facsimile: (916) 446-8199
ktaber@somachlaw.com
10 llacey@somachlaw.com

**EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE, § 6103**

11 Attorneys for Petitioner and Plaintiff
12 CITY OF STOCKTON

13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SACRAMENTO

15 CITY OF STOCKTON, a California general
16 law city,

17 Petitioner and Plaintiff,

18 v.

19 CALIFORNIA DEPARTMENT OF WATER
RESOURCES, a California state agency,

20 Respondent and Defendant,

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT**

(Code Civ. Proc., §§ 525, 526, 527, 1060,
1085, 1094.5; Pub. Res. Code, §§ 21168,
21168.5, 29700 et seq.; Wat. Code §§ 1215
et seq., 12200 et seq., 11460 et seq., 85000
et seq.; Public Trust Doctrine)

**CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA) CASE**

[Deemed Verified As to Public Agency
Petitioner Pursuant to Code of Civil
Procedure Section 446]

24 DOES 1 through 50,

25 Real Parties in Interest.

1 Petitioner and Plaintiff City of Stockton (“Stockton,” “City,” or “Petitioner”) alleges:

2 **INTRODUCTION**

3 1. On December 21, 2023, Respondent California Department of Water Resources
4 (“DWR” or “Respondent”) certified the Final Environmental Impact Report (FEIR) for and
5 approved the Delta Conveyance Project (“DCP” or “Project”), and adopted Findings of Fact, a
6 Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program for
7 the Project. This action challenges DWR’s approval of the Project and its certification of the
8 FEIR for the Project.

9 2. The Project is intended to be one of the State’s largest public works projects and
10 includes the construction of new water conveyance facilities with two new diversion structures on
11 the Sacramento River in the north Delta,¹ each a quarter mile long, construction of a 39-foot
12 diameter 45-mile-long conveyance tunnel running underneath the Delta and ancillary facilities,
13 and new project operations for the State Water Project (SWP). DWR proposes to, among other
14 things, construct two intake diversion facilities totaling 232 acres adjacent to the Town of Hood;
15 two 14-acre concrete batch plants at Lambert Road; a 222-acre double- launch shaft at Twin
16 Cities Road; and tall and vast piles of tunnel spoils. The total Delta footprint of the Project would
17 occupy 1,313.75 acres. The Project would divert up to 6,000 cubic feet per second (cfs) of
18 Sacramento River water at the Town of Hood intakes upstream of Stockton’s drinking water
19 intake. This is more than half of the capacity of the existing SWP Banks pumping plant and more
20 than the capacity of the federal Central Valley Project Jones pump at Tracy. Under certain
21 conditions, diversions would remove up to one third of the Sacramento River water downstream
22 of the intakes. The location and operation of the Project intakes present the potential for
23 significant adverse impacts to Stockton’s potable drinking water supply, operation of its Regional
24 Wastewater Control Facility (RWCF) as it pertains to treated wastewater discharge due to water
25 quality impacts, the City’s ability to divert water at its intake, and the public health. Construction
26

27 _____
28 ¹ As used in this Petition, the term “Delta” means the Sacramento-San Joaquin Delta as defined in California Water Code section 12220.

1 of the tunnels and other facilities, including truck and rail trips and noise will have significant
2 adverse public health impacts, including impacts to environmental justice communities.

3 3. Petitioner brings this action under the California Environmental Quality Act
4 (CEQA; Pub. Resources Code, § 21000 et seq.) and on other grounds as specified herein to
5 challenge DWR's certification of the FEIR and approval of the Project. Stockton is the largest
6 urban center wholly within the Delta and relies heavily on water diverted from the Delta for its
7 potable drinking water supply. Maintaining Delta water quality is critical to the City's potable
8 drinking water supply and wastewater operations, including its ability to use water that it is
9 authorized to divert under its water rights permit. Stockton's residents further enjoy substantial
10 recreational water-related activities, and unhoused persons reside along and consume water and
11 fish directly from Delta waterways. The Project threatens, among other things, the City's potable
12 drinking water supply and the public health and safety of its residents and animals through,
13 including but not limited to, substantially degraded water quality (e.g., increased cyanobacteria
14 harmful algal blooms (CHABs) and increased chloride and bromide levels) that will result in the
15 formation of trihalomethane compounds, and public health impacts associated with the Project's
16 air and noise pollution.

17 4. Under CEQA, prior to making a decision to certify the FEIR and approve the
18 Project, DWR was required to fully analyze and mitigate the Project's potentially significant
19 impacts and disclose them in a manner reasonably calculated to inform the public, and
20 meaningfully consider potentially feasible alternatives to the Project or its location that would be
21 capable of meeting most of the Project's objectives while eliminating or reducing one or more of
22 its significant impacts. DWR did not satisfy these requirements. The Project and the FEIR fail to
23 comply with CEQA for the reasons described below. The Project is also inconsistent with or
24 violates several other state laws, as discussed herein, and the public trust doctrine.

25 5. Because of the FEIR's numerous flaws, and DWR's procedural errors, DWR
26 prejudicially abused its discretion, failed to proceed in the manner required by law, and violated
27 CEQA when it certified the FEIR and approved the Project. Petitioner thus requests that this
28 Court issue a peremptory writ of mandate directing DWR to set aside its approval of the Project

1 and its certification of the FEIR and its related decisions and findings related to the Project.
2 Petitioner further requests an order declaring the Project is inconsistent with or violates the state
3 laws discussed herein and the public trust doctrine, and an injunctive order preventing DWR from
4 issuing any further approvals, expenditure of funds, or initiation of any construction related to the
5 Project until DWR has complied with CEQA, the state laws cited herein, and the public trust
6 doctrine.

7 **PARTIES**

8 6. Stockton is a political subdivision of the State of California and has the authority
9 to sue and be sued. Founded in 1849 and incorporated in 1850, Stockton is one of the oldest
10 incorporated cities in California. Stockton is governed by a seven-member City Council,
11 including six Councilmembers and the Mayor. Stockton is located on the San Joaquin River in
12 the southeast Delta. With approximately 315,000 residents, Stockton is the largest municipality
13 wholly within the Delta. It has a large environmental justice community and a higher than
14 statewide average percentage of residents who live below the poverty line. Stockton derives a
15 substantial percentage of its potable drinking water supply from Delta surface waters. The well-
16 being of the City, its residents, and economy is thus inextricably linked to the Delta, the quantity
17 and quality of Delta water supplies, and the Delta ecosystem. Stockton relies on a portfolio of
18 water supply sources and supporting infrastructure to meet existing and future demands.

19 a. The City of Stockton Municipal Utilities Department (COSMUD) provides
20 potable drinking water to a service population of more than 180,000, which is approximately 55
21 percent of the municipal and industrial potable water demand of the Stockton Metropolitan Area.
22 Stockton's water supply includes surface water rights to divert up to 30 million gallons per day
23 (MGD) of water from the San Joaquin River, contracted surface water supplies, and groundwater.
24 Currently, COSMUD obtains approximately 38 percent of its water supply from the San Joaquin
25 River, but the volume of water extracted from the San Joaquin River is projected to increase over
26 time. By 2035, water from the river intake will constitute about 58 percent of COSMUD's supply
27 at an operational capacity of 90 MGD. Stockton's most significant source of water is its Delta
28 Water Supply Project (DWSP), which derives its source water via diversion works from the Delta

1 at the southwest tip of Empire Tract. The Delta Water Treatment Plant (DWTP) treats water
2 diverted under the City's San Joaquin River water right, as well as purchased Mokelumne River
3 water. Stockton's acquisition of its own surface water rights and construction of its associated
4 water treatment plant was key in reducing the City's reliance on groundwater through an active
5 conjunctive use program.

6 b. In addition to providing potable drinking water, Stockton owns, operates,
7 and maintains wastewater collection and treatment facilities that serve the entire Stockton
8 Metropolitan Area. The City discharges treated wastewater to the San Joaquin River from its
9 RWCF under a National Pollutant Discharge Elimination System (NPDES) permit issued by the
10 Central Valley Regional Water Quality Control Board. Stockton's RWCF is a wastewater
11 treatment plant providing primary, secondary, and tertiary levels of treatment for the entire
12 Stockton Metropolitan Area population of 300,000. Wastewater treatment and discharge to the
13 San Joaquin River has been, and will continue to be, an essential service to the residential,
14 commercial, and industrial sectors of Stockton, and is essential to Stockton's exercise of its
15 surface water right, which authorizes Stockton to divert from the river only an amount equal to
16 the amount of its treated wastewater discharge. Stockton has made considerable investments in
17 its wastewater treatment processes to achieve the water quality standards set forth in its NPDES
18 permits.

19 c. Stockton residents will be severely impacted by the noise and air pollution
20 generated by the Project, the health effects of which have not been adequately analyzed or
21 mitigated in the FEIR.

22 d. Stockton residents enjoy recreational activities around Stockton. Water
23 quality impacts associated with the Project—such as, for example, increases in CHABs—will be
24 detrimental to Stockton residents' ability to participate in recreational water activities and will
25 negatively affect the public health of humans and animals.

26 7. DWR is, and at all times mentioned herein was, a public agency of the State of
27 California, formed and existing under the California Water Code, with its principal place of
28 business in the County of Sacramento. DWR operates the SWP subject to permits issued to it by

1 the SWRCB. DWR is, and at all times relevant herein was, charged with the faithful performance
2 of all applicable state, federal, and other laws, including CEQA and the CEQA Guidelines and the
3 public trust doctrine. DWR is the lead agency under CEQA for the preparation of the EIR and for
4 approval of the Project.

5 8. Does 1 to 50, inclusive, are persons or entities who may have, or may claim to
6 have, interests in the Project and have a legal interest in the outcome of these proceedings, the
7 exact nature of which is presently unknown to Stockton. The true names or capacities, whether
8 individual, corporate, associate, or otherwise, of Does 1 to 50, inclusive, are unknown to
9 Stockton, who therefore sues these persons or entities by fictitious names. If necessary, Stockton
10 will amend this Petition to show their true names and identities when ascertained.

11 JURISDICTION AND VENUE

12 9. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
13 sections 525 et seq., 1060, 1085 and 1094.5, Public Resources Code sections 21168, 21168.5,
14 29700 et seq., Water Code sections 12200 et seq., 11460 et seq., 1215 et seq., 85000 et seq., and
15 the public trust doctrine. This Court has the authority to issue a writ of mandate directing DWR
16 to vacate and set aside its approval of the Project and certification of the FEIR for the Project
17 under Code Civil Procedure sections 1085 and 1094.5. This Court further has authority to issue
18 the declarations and injunctions as requested herein under Code of Civil Procedure sections 525
19 et seq. and 1060.

20 10. Venue is proper in the Sacramento County Superior Court under Code of Civil
21 Procedure sections 393, 394, and 395 because DWR is a state agency, DWR's principal offices
22 are located in Sacramento, and Sacramento County is where many of the Project's environmental
23 impacts will occur and where the Project is proposed to be constructed.

24 STANDING

25 11. As described herein, Stockton is beneficially interested in the subject matter of this
26 proceeding because the Project will adversely affect the environmental and public resources
27 available to the City's residents as well as availability of water supplies that Stockton relies on to
28 serve its customers. Stockton has a direct and substantial beneficial interest in ensuring DWR

1 complies with laws relating to environmental protection, and Stockton and its residents are
2 substantially adversely affected by DWR's failure to comply with CEQA and the public trust
3 doctrine.

4 12. ~~By certifying a FEIR that is not supported by substantial evidence, approving the~~
5 Project when the Project was not adequately analyzed under CEQA, and otherwise failing to
6 comply with CEQA's substantive and procedural requirements, DWR has placed the residents
7 and businesses of the City, and the water resources relied on by the City, at a significant risk. The
8 approval of the Project further violates or is inconsistent with other state laws and the public trust
9 doctrine, as discussed herein. Stockton thus has standing to assert the claims raised in this
10 Petition.

11 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 13. As explained herein, Stockton actively participated throughout the administrative
13 process that led to DWR's decision to certify the FEIR for the Project. Stockton participated by
14 submitting comment letters and relevant evidence with regard to the draft EIR (DEIR) and FEIR.
15 Stockton's comments to the DEIR and FEIR are attached hereto as Attachments B through D.
16 Stockton has thus objected to Project approval during DWR's proceedings and may assert issues
17 that were raised by Stockton and other parties.

18 14. Stockton has fully exhausted all administrative remedies in that the determination
19 by DWR is final, and no further administrative appeal procedures are provided by state or local
20 law.

21 15. Within the last 30 days, DWR took final action with respect to its approval of the
22 Project, and on December 21, 2023, filed a Notice of Determination for the Project.

23 **NOTICE**

24 16. On January 17, 2024, Stockton served a notice on DWR, informing DWR of
25 Stockton's intent to file a petition for writ of mandate challenging DWR's certification of the
26 FEIR and approval of the Project, as required by Public Resources Code sections 21167
27 and 21167.5. The notice with the proof of service is attached hereto as Attachment A.
28

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

ELECTION TO PREPARE RECORD

17. Stockton elects to prepare the administrative record in this proceeding pursuant to Public Resources Code section 21167.6, subdivision (b)(2) and any other applicable laws. The Notice of Election to Prepare the Administrative Record is filed concurrently with this petition and complaint.

ATTORNEY FEES

18. Stockton is entitled to receive attorney fees from DWR pursuant to Code of Civil Procedure section 1021.5 because this action involves the enforcement of important rights affecting public interest. This action will, among other things, confer a significant benefit on the general public and a large class of persons, and the necessity and burden of enforcement against another public entity makes an award of fees appropriate.

INADEQUATE REMEDY AT LAW – STAY AND INJUNCTION

19. In its comment letters to DWR, Stockton requested that certification of the FEIR and approval of the Project be deferred until the FEIR’s informational deficiencies were addressed and resolved, and until adequate mitigation was developed and sufficient alternatives to the Project were properly considered. DWR refused to take such actions, and instead certified the FEIR and approved the Project.

20. Pursuant to Code of Civil Procedure sections 1085 and 1094.5, the Court may stay or enjoin the operation of any administrative decision or order involved in this proceeding.

21. In light of DWR’s CEQA violations in certifying the FEIR and approving the Project, any action regarding the construction or operation of the Project will irreparably harm the environment as described in this Petition, to the detriment of Stockton and its residents, businesses, and water users.

22. Stockton lacks an adequate remedy at law for the irreparable harm that Project activities will cause. Therefore, a stay or preliminary or permanent injunction should be issued in this case restraining DWR from taking any additional actions to issue permits, expend funds, or undertake any construction activities until DWR has complied with CEQA.

1 b. DWR failed to analyze the physical and mental public health impacts from
2 long-term exposure to prolonged Project-related noise pollution, despite having substantial
3 evidence supporting further analysis, and failed to discuss environmental justice concerns in that
4 regard. By failing to properly analyze those impacts and by omitting information necessary for
5 the public and decisionmakers to understand the Project's impacts in that regard, the FEIR fails as
6 an informational document.

7 c. DWR failed to analyze the full range of health impacts from Project-related
8 air pollution, despite having substantial evidence supporting the need for further analysis, and
9 failed to discuss environmental justice concerns in that regard. By failing to properly analyze
10 those impacts and by omitting information necessary for the public and decisionmakers to
11 understand the Project's impacts in that regard, the FEIR fails as an informational document.

12 d. DWR failed to provide a clear, stable, and consistent project description.
13 For example, but not to be considered the exclusive basis for this allegation, the project
14 description in the FEIR does not describe the full extent of the Project's reasonably foreseeable
15 operations (e.g., the quantity and timing of water to be diverted at the north Delta and south Delta
16 intakes, and how the SWP and Central Valley Project (CVP) will be operated with the Project in
17 place, given the coordinated operations of those projects), does not contain the same limitations
18 included in modeling, and includes undefined and vague terms. An adequate project description
19 is essential to understanding and drawing meaningful conclusions about the Project's effects on
20 the Delta environment. The Project's operations will, for example, affect water quality, which in
21 turn will affect Stockton's potable drinking water supply and Stockton's residents' public health
22 and recreational opportunities, among other things. The degradation of water quality will result
23 in detrimental changes to Delta salinity and residence time, and the reasonably foreseeable need
24 for increased surface water treatment or limited diversions altogether at certain times, all of which
25 will compromise Stockton's ability to treat surface water or recharge groundwater. The decrease
26 in water quality as a result of the Project will further increase harmful CHABs that will affect the
27 public health of humans and animals and will decrease recreational opportunities. The Project
28

1 will also negatively affect public health due to the Project's noise and air pollution impacts,
2 which are not adequately analyzed in the FEIR.

3 e. DWR used an unreasonable future baseline for analysis of Project impacts
4 because DWR failed to adequately analyze and provide information pertaining to the reasonably
5 foreseeable conditions and requirements expected to exist when the Project is constructed and
6 becomes operational, including but not limited to, reasonably foreseeable conditions related to
7 climate change, such as, for example, the rising sea level, levee failures, or the use of temporary
8 urgent change petitions. Due to the lack of information and analysis with regard to the baseline,
9 the FEIR also fails as an informational document.

10 f. Numerous impacts analyses in the FEIR fail to comply with CEQA
11 because they are not supported by substantial evidence; and/or fail to provide the information
12 necessary for the public to understand the complete scope of the Project's potential impacts;
13 and/or fail to provide the information necessary for the public to understand the modeling,
14 assumptions, or methodology used to analyze the Project's potential impacts; and/or fail to
15 disclose the basis for DWR's findings and conclusions; and/or rely on deferred analysis and
16 investigation; and/or fail to comport with existing laws that were enacted to protect the Delta. As
17 examples, but not as an exclusive list of grounds for this allegation: (1) DWR's water quality
18 impact analysis is not supported by substantial evidence because, among other things, the data is
19 derived from long-term averages by month and water year, which fails to accurately predict water
20 quality at Stockton's drinking water intake or wastewater discharge locations that are affected by
21 daily and even hourly water quality changes, DWR failed to adequately and appropriately
22 estimate hydrologic residence time, such that DWR's evaluation of CHABs is flawed, and DWR
23 failed to use best available information and science in its analysis; (2) DWR's water quality
24 impact analysis fails to discuss and evaluate the impacts of reasonably foreseeable Project
25 operations decisions, such as the use of temporary urgency change petitions; (3) DWR failed to
26 consider, analyze, and discuss reasonably foreseeable climate change conditions expected to exist
27 during Project construction and operation (e.g., including but not limited to droughts, sea level
28 rise, levee failures, and flooding) and its assumptions as to future sea levels and its methodology

1 for evaluating sea level rise are unclear and not supported by substantial evidence—thus masking
2 the severity of the Project’s impacts, including but not limited to, impacts to water quality and
3 water supply; (4) DWR’s failure to analyze impacts resulting from the reasonably foreseeable
4 operation of the Project renders its impacts analyses as to, for example, but not limited to, surface
5 water resources, water supply changes, and water quality inadequate; (5) DWR failed to
6 adequately analyze (and mitigate) and provide sufficient information regarding its analysis of,
7 and/or lacks substantial evidence to support its findings regarding, impacts on water quality and
8 water supply; (6) DWR failed to provide adequate information regarding the Project’s use and
9 sources of water during construction and operation; and (7) DWR’s method of computing and
10 presenting summary statistics is flawed and lacks substantial evidence.

11 g. DWR’s failure to include sufficient information in the FEIR for the public
12 to understand the full range of Project operations (for example, but not limited to, how much
13 water will be diverted at the north Delta intakes and the south Delta intakes and the timing of
14 such diversions), the vagueness, ambiguity, and uncertainty as to the description of the Project’s
15 operations, and the failure to analyze reasonably foreseeable operational actions renders its
16 impacts analyses and alternatives analyses inadequate, especially as to (but not limited to) areas
17 of impacts that may be affected by reduced water supplies in the Sacramento River and San
18 Joaquin River.

19 h. DWR adopted thresholds of significance that are not supported by
20 substantial evidence and reduce the potential significance of Project impacts, including but not
21 limited to impacts on water quality, groundwater, and noise. The FEIR further fails as an
22 informational document because DWR failed to explain why it adopted certain thresholds of
23 significance.

24 i. DWR failed to adequately analyze Project impacts because it determined
25 certain impacts, such as noise impacts discussed in Petitioner’s comments, would be less than
26 significant based solely on its chosen thresholds of significance, while failing to consider and
27 resolve fair arguments based on substantial evidence that the Project would result in significant
28

1 environmental effects irrespective of whether DWR's selected threshold of significance has been
2 exceeded.

3 j. The FEIR fails as an informational document because DWR failed to
4 discuss and address the Project's impacts considering reasonably foreseeable circumstances
5 expected to exist during construction and when the Project is operational as a result of climate
6 change.

7 k. The size and structure of the FEIR frustrates public participation in
8 violation of CEQA and fails to present information in a manner reasonably calculated to inform
9 the public. As examples, but not the exclusive basis for this allegation: the location of stated
10 evidence supporting findings is not identified; the analyses of impacts are scattered throughout,
11 with conclusions often far-removed from the evidence that purportedly supports them; or no
12 evidence is presented to support findings.

13 l. DWR failed to adequately respond to numerous substantive comments and
14 recommendations provided in response to the DEIR, including comments supported by detailed
15 technical and expert evidence, in areas including but not limited to the modeling that formed the
16 basis for DWR's analysis and impact determinations, the methodology and evidence used to
17 analyze the Project's environmental impacts, the range of alternatives and alternatives analysis,
18 and the failure to model and identify potential impacts relating to the reasonably foreseeable
19 operation of the Project as a result of climate change. Many responses to comments contain
20 conclusory statements that are unsupported by substantial evidence in the record. Numerous
21 responses do not fully respond to the comments as submitted, or otherwise reflect a good faith,
22 reasoned analysis of the comments.

23 m. DWR failed to analyze and/or adopt adequate and feasible mitigation
24 measures to mitigate the Project's potentially significant impacts, and/or improperly deferred
25 mitigation as explained in incorporated comments. As an example, but not the exclusive basis for
26 this allegation, Mitigation Measure GW-1 is too narrow and vague to adequately mitigate the
27 groundwater impacts from the Project, does not include a threshold of significance that is relevant
28

1 for natural ecosystems dependent on shallow groundwater conditions, and fails to include
2 reasonable options for mitigating impacts.

3 n. DWR adopted mitigation measures that are not fully enforceable through
4 permit conditions, agreements, or other legally binding instruments. As one example, but not the
5 exclusive basis for this allegation, DWR failed to show how its self-imposed Project operational
6 criteria will be enforceable, rendering its export capacity analysis inadequate.

7 o. The FEIR improperly incorporates mitigation measures into the project
8 description. As an example, but not the exclusive basis for this allegation, DWR characterized
9 “environmental commitments” as part of the Project; however the “environmental commitments”
10 are plainly mitigation measures.

11 p. The FEIR does not contain all of Stockton’s comments to the DEIR as
12 required under CEQA.

13 q. DWR adopted unreasonably narrow project objectives that precluded
14 consideration of reasonable alternatives for achieving the project’s underlying purpose. The
15 objectives are also inconsistent with the 2020 Water Resilience Portfolio In Response to the
16 Executive Order N-10-19, prepared by the California Natural Resources Agency, et al.
17 (Portfolio), as well as the Delta Reform Act of 2009. As an example, but not the exclusive basis
18 for this allegation, DWR excluded improvements to existing Delta levees from the objectives in
19 support of the Project’s purpose. The Project’s objectives should be expanded to include
20 prevention of water quality degradation in the Delta and avoidance of adverse impacts to current
21 land uses and communities in the Delta, which is consistent with the Delta Plan.

22 r. DWR failed to demonstrate the Project is consistent with regional plans.
23 For example, but not the exclusive basis for this allegation, DWR’s finding that the Project is
24 consistent with the Delta Reform Act of 2009 is not supported by substantial evidence.

25 s. DWR failed to identify a range of reasonable alternatives to the Project and
26 failed to meaningfully analyze reasonable alternatives to the Project that would reduce or avoid
27 the significant environmental impacts of the proposed project. As examples, but not the exclusive
28 basis for this allegation: the alternatives analysis is inconsistent with the Portfolio and the Delta

1 Reform Act of 2009; DWR's two-level filtering criteria for the consideration of feasible
2 alternatives to the Project lacks substantial evidence; DWR ignored evidence of viable,
3 potentially feasible environmentally superior alternatives to the Project that could achieve the
4 Project's objectives; and the FEIR is legally inadequate because it contains an overly narrow
5 range of alternatives considering the nature of the Project and its environmental effects.

6 t. DWR's selection of intake siting alternatives to the Project in the FEIR is
7 unreasonable and lacks substantial evidence, and did not support a reasoned choice based on the
8 purpose and requirements of CEQA, particularly in light of the reasonably foreseeable conditions
9 that will exist in the Delta during the Project's construction and operation due to climate change.

10 u. The alternatives analysis fails to comply with CEQA because the
11 alternatives evaluated in the EIR were not developed or selected for consideration based on
12 comparison with the DEIR's proposed project, as required by CEQA. Rather, the DEIR
13 alternatives were developed based on a fundamentally different (and infeasible) project, the
14 proposed project as described in the Notice of Preparation.

15 v. DWR failed to properly describe the baseline physical conditions in its air
16 pollution analysis, which infected the analysis of the Project's potential environmental impacts
17 and failed to inform the public regarding the Project's potential environmental impacts as to air
18 pollution and consistency with regional air quality plans.

19 w. DWR failed to use the best available and sound science to analyze Project
20 impacts, including but not limited to, for example, water quality.

21 x. The public trust findings are not supported by substantial evidence.

22 y. DWR's findings that the Project is consistent with the Portfolio are not
23 supported by substantial evidence.

24 z. The Statement of Overriding Considerations is not supported by substantial
25 evidence. Any failure to disclose the true scope of Project impacts cannot be cured by a finding
26 that an impact is significant and unavoidable, and DWR's finding that the Project's benefits
27 outweigh its significant impacts is not supported by substantial evidence due to the FEIR's failure
28 to adequately evaluate and disclose all of the Project's significant impacts, among other flaws.

1 storage reservoirs into the Delta for export from the Delta to be integrated to the “maximum
2 extent possible” to fulfill the objectives of the Act (Wat. Code, § 12205).

3 32. The Project violates the 1959 Delta Protection Act in numerous respects, including
4 but not limited to: the Project, by design, directly circumvents the maintenance and provision of
5 the “common source of freshwater” (or “common pool”) through the construction of intakes and a
6 tunnel in the northern Delta to enable DWR to divert and export substantial amounts of
7 Sacramento River freshwater directly into a tunnel that would otherwise flow into that common
8 pool in the absence of the Project; and the Project in many instances will result in the export of
9 water from the Delta that directly deprives in-Delta water users of that supply and quality.

10 33. Such a bypass deprives essentially the entirety of the Delta of the common salinity
11 control and other benefits mandated by the 1959 Delta Protection Act that such fresh water would
12 provide if it flowed into the common pool before it was exported.

13 34. For the foregoing reasons, DWR failed to act in the manner required by law and
14 prejudicially abused its discretion in approving the Project in violation of the 1959 Delta
15 Protection Act.

16 **THIRD CAUSE OF ACTION**
17 ***Violation of the 1992 Delta Protection Act***

18 35. Petitioner realleges and incorporates by reference each and every allegation set
19 forth above.

20 36. A controversy exists between DWR and Petitioner regarding the Project’s
21 compliance with/violation of the 1992 Delta Protection Act (Pub. Resources Code, § 29700
22 et seq.) Petitioner is informed and believes, and on that basis alleges, DWR believes the Project
23 complies with the 1992 Delta Protection Act, whereas Petitioner believes the Project is
24 inconsistent with and violates the 1992 Delta Protection Act.

25 37. In the 1992 Delta Protection Act, the Legislature made numerous findings and
26 declarations for the protection of the Delta, including those set forth in Public Resources Code
27 sections 29701 and 29702. Public Resources Code section 29701 provides, “the Sacramento-San
28 Joaquin Delta is a natural resource of statewide, national, and international significance,

1 containing irreplaceable resources, and it is the policy of the state to recognize, preserve, and
2 protect those resources of the delta for the use and enjoyment of current and future generations.”
3 Public Resources Code section 29702, subdivision (b) provides, the basic goals of the state for the
4 Delta include to “[p]rotect, maintain, and, where possible, enhance and restore the overall quality
5 of the delta environment, including, but not limited to, agriculture, wildlife habitat, and
6 recreational activities.”

7 38. The FEIR confirms the Project’s construction and operation will substantially
8 impair, and in many cases permanently destroy, resources and qualities of the Delta, in direct
9 contravention of the 1992 Delta Protection Act.

10 39. For the foregoing reasons, DWR failed to act in the manner required by law and
11 prejudicially abused its discretion in approving the Project in violation of the 1992 Delta
12 Protection Act.

13 **FOURTH CAUSE OF ACTION**

14 ***Violation Of The Watershed Protection Act And Area Of Origin Protections***

15 40. Petitioner realleges and incorporates by reference each and every allegation set
16 forth above.

17 41. A controversy exists between DWR and Petitioner regarding the Project’s
18 compliance with/violation of the Watershed Protection Act (Wat. Code, § 11460 et seq.) and area
19 of origin protections (Wat. Code, § 1215 et seq.). Petitioner is informed and believes, and on that
20 basis alleges, DWR believes the Project complies with the foregoing laws, whereas Petitioner
21 believes the Project is inconsistent with and violates the foregoing laws.

22 42. Water Code section 11460 of the Watershed Protection Act addresses the prior
23 rights to water reasonably required to adequately supply the beneficial needs of a watershed, area
24 in which water originates (or immediately adjacent areas thereto which can conveniently be
25 supplied with water therefrom), or any of the inhabitants or property owners therein. Water Code
26 section 1216 likewise protects water from export, as discussed therein. As an example, but not
27 the sole basis for this allegation, by increasing chloride levels above the operational criteria of
28

1 Stockton's drinking water system, the Project will limit Stockton's ability to exercise its surface
2 water rights, which will reduce deliveries to Stockton and significantly impact the City's
3 beneficial use of its water right.

4 43. The Project is inconsistent with the foregoing requirements because it would divert
5 fresh water from the Delta and materially impair the quality of water in the Delta, thereby
6 depriving the Delta communities and residents of their prior right to water required to adequately
7 supply their beneficial needs.

8 44. For the foregoing reasons, DWR failed to act in the manner required by law and
9 prejudicially abused its discretion in approving the Project in violation of the Water Protection
10 Act and area of origin protections.

11 **FIFTH CAUSE OF ACTION**

12 ***Violation Of The Delta Reform Act Of 2009 And The Delta Plan***

13 45. Petitioner realleges and incorporates by reference each and every allegation set
14 forth above.

15 46. A controversy exists between DWR and Petitioner regarding the Project's
16 compliance with/violation of the Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.). DWR
17 believes the Project is in compliance with the Delta Reform Act of 2009, whereas Petitioner
18 believes the Project is inconsistent with and violates the Delta Reform Act of 2009.

19 47. The Delta Reform Act of 2009 defines co-equal goals of Delta water management
20 in Water Code section 85054 and established two co-equal goals to: (1) secure a reliable water
21 supply for California, and (2) protect, restore, and enhance the Delta ecosystem and the fish,
22 wildlife, and recreation it supports. The Act recognized the Delta as an "evolving" environment
23 and outlined a state policy of reduced reliance on Delta water exports, opting for a strategy of
24 improved conservation, the development and enhancement of regional supplies, and water use
25 efficiency.

26 48. The Project directly conflicts with the co-equal goal to protect, restore, and
27 enhance the Delta ecosystem. The Project further conflicts with the requirement that the co-equal
28 goal be achieved in a manner that protects and enhances the unique cultural, recreational, natural

1 resource, and agricultural values of the Delta. The Project further is inconsistent with the Delta
2 Reform Act's policy to reduce reliance on the Delta, the requirement to use the best available
3 science in analyses, the directive to analyze potential effects on flood management, the
4 regulations directing that a project should not impair the future potential for implementation of
5 habitat restorations, and the policy to reduce conflicts with existing land uses.

6 49. For the foregoing reasons, DWR failed to act in the manner required by law and
7 prejudicially abused its discretion in approving the Project, which is inconsistent with the Delta
8 Reform Act of 2009.

9
10 **SIXTH CAUSE OF ACTION**
Violation of the Public Trust Doctrine

11 50. Stockton realleges and incorporates by reference each and every allegation set
12 forth above.

13 51. The State of California owns all of its navigable waterways and the lands lying
14 beneath them as trustee of a public trust for the benefit of the people.

15 52. The public trust doctrine in California encompasses all navigable lakes and
16 streams and protects navigable waters from harm caused by diversion of non-navigable
17 tributaries, including those diverted and harmed by the Project. The doctrine also applies to non-
18 navigable streams (e.g., groundwater) that feed navigable waterways. The purpose of the doctrine
19 is to preserve and protect public trust resources for the common use of the people, as well as
20 water's function as natural habitat, including protecting habitat for wildlife.

21 53. An agency's duty to perform a public trust analysis prior to approving a project is
22 not necessarily discharged by virtue of performing CEQA review. Instead, public agencies have
23 an independent duty to perform a public trust consistency analysis, based on substantial evidence
24 in the record, as part of an adequate CEQA review.

25 54. A controversy exists between DWR and Stockton regarding the Project's
26 compliance with and/or violation of the public trust doctrine. As explained in its public trust
27 findings, DWR maintains the Project is in compliance with the public trust doctrine, whereas
28 Stockton maintains that it is not.

1 55. DWR's failure to adequately consider and analyze the public trust in approving the
2 Project will harm trust resources and Stockton's and the people's rights and interests in those
3 resources. As an example, but not the exclusive basis for this allegation, DWR has failed to
4 adequately analyze how the Project will affect Delta water quality, including the formation of
5 CHABs, that will have substantial adverse effects on the public trust uses of recreation and
6 fishing.

7 56. By failing to adequately consider, analyze and protect the public trust, DWR
8 violated the State's duty to protect public trust resources. The inadequacy of the FEIR with
9 regard to the public trust findings also means that responsible agencies with an obligation to
10 protect the public trust, including but not limited to the SWRCB and California Department of
11 Fish and Wildlife, will not have sufficient information and evidence to conduct their own legally
12 adequate public trust analysis and findings, or issue any discretionary approvals for the Project.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Stockton prays for the following relief:

15 1. For an order staying the effect of DWR's certification of the FEIR and approval of
16 the Project;

17 2. For a declaration under Code of Civil Procedure section 1060 that DWR's
18 approval of the Project:

19 a. Violates the state laws enacted to protect the Delta, as discussed herein;

20 b. Is inconsistent with the Delta Reform Act of 2009; and

21 c. Violates the public trust doctrine;

22 3. For issuance of a temporary restraining order, preliminary injunction, and
23 permanent injunction prohibiting any actions by DWR pursuant to DWR's approval of the Project
24 and certification of the FEIR for the Project until DWR has fully complied with all requirements
25 of CEQA and all other applicable state and local laws, policies, and regulations;

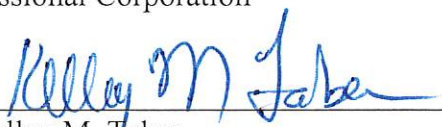
26 4. For a peremptory writ of mandate directing DWR to:

27 a. Vacate and set aside its certification of the FEIR for the Project and all
28 approvals of the Project;

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

- b. Suspend any and all activity pursuant to DWR's approval of the Project that could result in an adverse change or alteration to the physical environment until DWR has complied with all requirements of CEQA and all other applicable state and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public Resources Code section 21168.9; and
 - c. Prepare, circulate, and consider a new and legally adequate EIR for the Project and otherwise to comply with CEQA, state laws, and the public trust doctrine prior to any subsequent action taken to approve the Project;
- 5. For costs of suit;
 - 6. For reasonable attorney fees pursuant to Code of Civil Procedure section 1021.5;
- and,
- 7. For such other and further relief as the Court deems just and proper.

SOMACH SIMMONS & DUNN
A Professional Corporation

By: 
Kelley M. Taber
Attorneys for Petitioner and Plaintiff
City of Stockton

DATED: January 19, 2024