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

12 Attorneys for Petitioner and Plaintiff  
13 County of Sacramento

14 SUPERIOR COURT OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

16 COUNTY OF SACRAMENTO, a California  
17 county,

18 Petitioner and Plaintiff,

19 v.

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

21 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]

25 DOES 1 through 50,

26 Real Parties in Interest.  
27  
28

1 Petitioner and Plaintiff County of Sacramento (“County” or “Petitioner”) alleges:

2 **INTRODUCTION AND BACKGROUND**

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,<sup>1</sup> 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). The County is ground zero in  
14 terms of the physical, environmental, and socioeconomic impacts of the massive water  
15 infrastructure facilities. The Project will impact County residents and businesses in myriad and  
16 far-reaching ways – some identified in the Project documents and some that may not be apparent  
17 for years to come – and threaten the security and reliability of the County’s water supply. The  
18 Project will irreversibly alter and, in many cases, permanently destroy the generations-old  
19 socioeconomic fabric and physical landscape of the Delta.

20 3. The Project will change the face of the Delta through the construction and  
21 operation of multiple industrial facilities in previously natural, agrarian settings. In the County  
22 alone, DWR would construct two intake diversion facilities totaling 232 acres adjacent to the  
23 Town of Hood, two 14-acre concrete batch plants at Lambert Road, a 222-acre double tunnel  
24 boring launch shaft at Twin Cities Road and a 214-acre, 15-foot-high reusable tunnel material pile  
25 at the “Twin Cities Complex.” Construction of the Project will have significant adverse public health  
26 impacts because it will generate hundreds of thousands of heavy truck trips on Interstate 5 and local roads

27 \_\_\_\_\_  
28 <sup>1</sup> As used in this Petition, the term “Delta” means the Sacramento-San Joaquin Delta as defined in California Water Code section 12220.

1 and will generate substantial noise over a long period of time. The total Delta footprint of the Project  
2 would occupy 1,313.75 acres.

3 4. In addition to permanently scarring the Delta landscape, the Project would divert  
4 up to 6,000 cubic feet per second (cfs) of Sacramento River water at the Town of Hood intakes.  
5 This is more than half of the capacity of the existing SWP Banks pumping plant and more than  
6 the capacity of the federal Central Valley Project Jones pump at Tracy. Under certain conditions,  
7 diversions would remove up to one-third of the Sacramento River water downstream of the  
8 intakes.

9 5. Petitioner brings this action under the California Environmental Quality Act  
10 (CEQA; Pub. Resources Code, § 21000, et seq.) and on other grounds as specified herein to  
11 challenge DWR's certification of the FEIR and approval of the Project. Under CEQA, prior to  
12 making a decision to certify the FEIR and approve the Project, DWR was required to fully  
13 analyze and mitigate the Project's potentially significant impacts and disclose them in a manner  
14 reasonably calculated to inform the public, and meaningfully consider potentially feasible  
15 alternatives to the Project or its location that would be capable of meeting most of the Project's  
16 objectives while eliminating or reducing one or more of its significant impacts. DWR did not  
17 satisfy these requirements. The Project and the FEIR fail to comply with CEQA for the reasons  
18 described below. The Project is also inconsistent with or violates several other state laws, as  
19 discussed herein, and the public trust doctrine.

20 6. Because of the FEIR's numerous flaws, and DWR's procedural errors, DWR  
21 prejudicially abused its discretion, failed to proceed in the manner required by law, and violated  
22 CEQA when it certified the FEIR and approved the Project. Petitioner thus requests that this  
23 Court issue a peremptory writ of mandate directing DWR to set aside its approval of the Project  
24 and its certification of the FEIR and its decisions and findings related to the Project. Petitioner  
25 further requests an order declaring the Project is inconsistent with or violates the state laws  
26 discussed herein and the public trust doctrine, and an injunctive order preventing DWR from  
27 issuing any further approvals, expenditure of funds, or initiation of any construction related to the  
28

1 Project until DWR has complied with CEQA, the state laws cited herein, and the public trust  
2 doctrine.

3 **PARTIES**

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

6 8. DWR is, and at all times mentioned herein was, a public agency of the State of  
7 California, formed and existing under the California Water Code, with its principal place of  
8 business in the County of Sacramento. DWR operates the SWP subject to permits issued to it by  
9 the State Water Resources Control Board (SWRCB). DWR is, and at all times relevant herein  
10 was, charged with the faithful performance of all applicable state, federal, and other laws,  
11 including CEQA and the CEQA Guidelines and the public trust doctrine. DWR is the lead  
12 agency under CEQA for the preparation of the EIR and for approval of the Project.

13 9. Does 1 to 50, inclusive, are persons or entities who may have, or may claim to  
14 have, interest in the Project and have a legal interest in the outcome of these proceedings, the  
15 exact nature of which is presently unknown to Petitioner. The true names or capacities, whether  
16 individual, corporate, associate, or otherwise, of Does 1 to 50, inclusive, are unknown to  
17 Petitioner, who therefore sues these parties by fictitious names. If necessary, Petitioner will  
18 request leave to amend this Petition to show their true names and capacities when ascertained.

19 **JURISDICTION AND VENUE**

20 10. This Court has jurisdiction over this action pursuant to Code of Civil Procedure  
21 sections 525 et seq., 1060, 1085 and 1094.5, Public Resources Code sections 21168, 21168.5,  
22 29700 et seq., Water Code sections 12200 et seq., 11460 et seq., 1215 et seq., 85000 et seq., and  
23 the public trust doctrine. This Court has the authority to issue a writ of mandate directing DWR  
24 to vacate and set aside its approval of the Project and certification of the FEIR for the Project  
25 under Code Civil Procedure sections 1085 and 1094.5. This Court further has authority to issue  
26 the declarations and injunctions requested herein under Code of Civil Procedure sections 525 et  
27 seq. and 1060.

28 11. Venue properly lies in the Sacramento County Superior Court pursuant to Code of

1 Civil Procedure sections 393, 394, and 395 because DWR is a state agency, DWR's principal  
2 offices are located in Sacramento, and Sacramento County is where many of the Project's  
3 environmental impacts will occur and where the Project is proposed to be constructed.

4 **STANDING**

5 12. As described herein, Petitioner is beneficially interested in the subject matter of  
6 this proceeding because the Project will adversely affect the environmental resources within the  
7 County. Petitioner has a direct and substantial beneficial interest in ensuring that DWR complies  
8 with laws relating to environmental protection, and the County and its residents are substantially  
9 adversely affected by DWR's failure to comply with CEQA and the public trust doctrine.

10 13. By certifying a FEIR that is not supported by substantial evidence, approving the  
11 Project when the Project was not adequately analyzed under CEQA, and otherwise failing to  
12 comply with CEQA's substantive and procedural requirements, DWR has placed the residents  
13 and businesses of the County, and the Sacramento River ecosystem and the water resources relied  
14 on by the County, at a significant risk. The approval of the Project further violates or is  
15 inconsistent with other state laws and the public trust doctrine, as discussed herein. Petitioner  
16 thus has standing to assert the claims raised in this Petition.

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 14. As explained herein, Petitioner actively participated throughout the administrative  
19 process that led to DWR's decision to certify the FEIR for the Project. Petitioner participated by  
20 submitting comment letters and relevant evidence with regard to the draft EIR (DEIR) and FEIR.  
21 Petitioner's comments to the DEIR and FEIR are attached hereto as Attachments B through E.  
22 Sacramento County Water Agency's (SCWA) comments to the DEIR and FEIR, which were  
23 incorporated into Petitioner's comments, are attached hereto as Attachments F and G. Petitioner  
24 has thus objected to Project approval during DWR's proceedings and may assert issues that were  
25 raised by Petitioner and other parties.

26 15. Petitioner has fully exhausted all administrative remedies in that the determination  
27 by DWR is final, and no further administrative appeal procedures are provided by state or local  
28 law.

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

3 **NOTICE**

4 17. On January 17, 2024, Petitioner served a notice on DWR, informing DWR of the  
5 Petitioner's intent to file a petition for writ of mandate challenging DWR's certification of the  
6 EIR and approval of the Project, as required by Public Resources Code sections 21167  
7 and 21167.5. The notice with the proof of service is attached hereto as Attachment A.

8 **ELECTION TO PREPARE RECORD**

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

13 **ATTORNEY FEES**

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

19 **INADEQUATE REMEDY AT LAW – STAY AND INJUNCTION**

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

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

27 22. In light of DWR's CEQA violations in certifying the FEIR and approving the  
28 Project, any action regarding the construction or operation of the Project will irreparably harm the

1 environment as described in this Petition, to the detriment of Petitioner and the Delta's residents,  
2 businesses, and water users.

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

7 24. A stay or injunction of DWR actions relating to the Project would not be against  
8 the public interest because (a) DWR is required by CEQA to conduct an adequate environmental  
9 review of the Project before taking any actions to approve it, (b) construction and operation of the  
10 Project will have significant irreparable impacts on the environment and persons, and such  
11 activities, along with the expenditure of funds in furtherance of those activities, will prejudice  
12 DWR's consideration of alternatives to the Project in any remedial CEQA review conducted  
13 pursuant to a decision of this Court, and (c) DWR will not be harmed by a stay or injunction.

14 **FIRST CAUSE OF ACTION**  
15 ***Violations of CEQA***

16 25. Petitioner realleges and incorporates by reference each and every allegation set  
17 forth above.

18 26. Petitioner and other commenters raised substantial comments in response to the  
19 DEIR and FEIR. As noted, Petitioner's and SCWA's comments are attached hereto as  
20 Attachments B through G. The attachments provide greater specificity regarding the allegations  
21 herein. Petitioner hereby incorporates its and other commenters' comments to the DEIR and  
22 FEIR, DWR's responses thereto, and further submittals regarding the Project required to be  
23 included in the Administrative Record.

24 27. DWR's actions in certifying the FEIR, adopting related findings and a Statement  
25 of Overriding Considerations, and approving the Project constitute a prejudicial abuse of  
26 discretion in that DWR failed to proceed in the manner required by law and its actions are not  
27 supported by substantial evidence under Public Resources Code section 21166 and California  
28 Code of Regulations, title 14, sections 15162 to 15164. Specifically:

1 a. DWR failed to adequately analyze the Project's potential direct, indirect,  
2 and cumulative impacts in multiple key areas and, accordingly, also failed to adequately consider  
3 and identify appropriate associated mitigation measures and alternatives. As examples, but not  
4 the exclusive basis for this allegation, DWR failed to treat impacts to water supply as an impact  
5 for analysis in the FEIR and did not consider the Project's impacts to the health of Delta residents  
6 from 15 to 20 years of large-scale construction activity.

7 b. DWR failed to provide a clear, stable, and consistent project description.  
8 For example, but not to be considered the exclusive basis for this allegation, the project  
9 description in the FEIR does not describe the full extent of the Project's reasonably foreseeable  
10 operations (e.g., the quantity and timing of water to be diverted at the north Delta and south Delta  
11 intakes, and how the SWP and Central Valley Project (CVP) will be operated with the Project in  
12 place, given the coordinated operations of those projects), does not contain the same limitations  
13 included in modeling, and includes undefined and vague terms. An adequate project description  
14 is essential to understanding and drawing meaningful conclusions about the Project's effects on  
15 the Delta environment.

16 c. DWR used an unreasonable future baseline for analysis of Project impacts  
17 because DWR failed to adequately analyze and provide information pertaining to the reasonably  
18 foreseeable conditions and requirements expected to exist when the Project is constructed and  
19 becomes operational, including but not limited to, reasonably foreseeable conditions related to  
20 climate change, such as, for example, the rising sea level, levee failures, or the reasonably  
21 foreseeable use of temporary urgency change petitions. Additionally, DWR did not take into  
22 account reasonably foreseeable land uses that will be in existence when the Project is constructed  
23 and becomes operational, and thus did not include the ecological and other benefits from such  
24 land uses in the baseline for purposes of its impact analysis. Due to the lack of information and  
25 analysis with regard to the baseline, the FEIR also fails as an informational document.

26 d. Numerous impacts analyses in the FEIR fail to comply with CEQA  
27 because they are not supported by substantial evidence; and/or fail to provide the information  
28 necessary for the public to understand the complete scope of the Project's potential impacts;



1 and/or fail to provide the information necessary for the public to understand the modeling,  
2 assumptions, or methodology used to analyze the Project's potential impacts; and/or fail to  
3 disclose the basis for DWR's findings and conclusions; and/or rely on deferred analysis and  
4 investigation; and/or fail to comport with existing laws that were enacted to protect the Delta. As  
5 examples, but not as an exclusive list of grounds for this allegation: (1) DWR's failure to analyze  
6 impacts resulting from the reasonably foreseeable operation of the Project renders its impacts  
7 analyses as to, for example (but not limited to), surface water resources, water supply changes,  
8 and water quality inadequate; (2) DWR failed to adequately analyze (and mitigate) and provide  
9 sufficient information regarding its analysis of, and/or lacks substantial evidence to support its  
10 findings regarding, impacts on groundwater resources, including but not limited to impacts on the  
11 South American Subbasin (SASb) and potential conflicts with implementation of the SASb  
12 Groundwater Sustainability Plan, impacts to shallow groundwater zones and related impacts to  
13 groundwater-dependent ecosystems, and potential increases in groundwater storage; (3) DWR  
14 failed to adequately analyze (and mitigate) and provide sufficient information regarding its  
15 analysis of, and/or lacks substantial evidence to support its findings regarding, potential impacts  
16 to the Town of Hood's water service; (4) DWR failed to provide adequate information regarding  
17 the Project's use and sources of water during construction and operation; (5) DWR failed to  
18 consider, analyze, and discuss reasonably foreseeable climate change conditions expected to exist  
19 during Project construction and operation (e.g., including but not limited to droughts, sea level  
20 rise, levee failures, and flooding) and its assumptions as to future sea levels and methodology for  
21 evaluating sea level rise are unclear and not supported by substantial evidence—thus masking the  
22 severity of the Project's impacts as to, including but not limited to, reverse flows, groundwater,  
23 and water quality; (6) DWR's water quality impact analysis fails to discuss and evaluate the  
24 impacts of reasonably foreseeable Project operations decisions, such as the use of temporary  
25 urgency change petitions; (7) DWR failed to adequately analyze (and mitigate) and provide  
26 sufficient information regarding its analysis of, and/or lacks substantial evidence to support its  
27 findings regarding, impacts on water quality and water supply; and (8) DWR's method of  
28 computing and presenting summary statistics is flawed and lacks substantial evidence.

1 e. DWR's failure to include sufficient information in the FEIR for the public  
2 to understand the full range of Project operations (for example, but not limited to, how much  
3 water will be diverted at the north Delta intakes and the south Delta intakes and the timing of  
4 such diversions), the vagueness, ambiguity, and uncertainty as to the description of the Project's  
5 operations, and the failure to analyze reasonably foreseeable operational actions renders its  
6 impacts analyses and alternatives analyses inadequate, especially as to (but not limited to) areas  
7 of impacts that may be affected by reduced water supplies in the Sacramento River.

8 f. DWR adopted thresholds of significance that are not supported by  
9 substantial evidence and reduce the potential significance of Project impacts, including but not  
10 limited to impacts on water quality, groundwater, agriculture, transportation, aesthetics, and noise.  
11 The FEIR further fails as an informational document because DWR failed to explain why it  
12 adopted certain thresholds of significance.

13 g. DWR failed to adequately analyze Project impacts because it determined  
14 certain impacts, such as noise impacts discussed in Petitioner's comments, would be less than  
15 significant based solely on its chosen thresholds of significance, while failing to consider and  
16 resolve fair arguments based on substantial evidence that the Project would result in significant  
17 environmental effects irrespective of whether DWR's selected threshold of significance has been  
18 exceeded.

19 h. The FEIR fails as an informational document because DWR failed to  
20 discuss and address the Project's impacts considering reasonably foreseeable circumstances  
21 expected to exist during construction and when the Project is operational as a result of climate  
22 change, and the Project's impacts on reasonably foreseeable existing land uses.

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

1           j.       DWR failed to adequately respond to numerous substantive comments and  
2 recommendations provided in response to the DEIR, including comments supported by detailed  
3 technical and expert evidence, in areas including but not limited to the modeling that formed the  
4 basis for DWR's analysis and impact determinations, the methodology and evidence used to  
5 analyze the Project's environmental impacts, the range of alternatives and alternatives analysis,  
6 and the failure to model and identify potential impacts relating to the reasonably foreseeable  
7 operation of the Project as a result of climate change. Many responses to comments contain  
8 conclusory statements that are unsupported by substantial evidence in the record. Numerous  
9 responses do not fully respond to the comments as submitted, or otherwise reflect a good faith,  
10 reasoned analysis of the comments.

11           k.       DWR failed to analyze and/or adopt adequate and feasible mitigation  
12 measures to mitigate the Project's potentially significant impacts, and/or improperly deferred  
13 mitigation as explained in incorporated comments. As an example, but not the exclusive basis for  
14 this allegation, Mitigation Measure GW-1 is too narrow and vague to adequately mitigate the  
15 groundwater impacts from the Project, does not include a threshold of significance that is relevant  
16 for natural ecosystems dependent on shallow groundwater conditions, and fails to include  
17 reasonable options for mitigating impacts.

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

22           m.       The FEIR improperly incorporates mitigation measures into the Project  
23 description. As an example, but not the exclusive basis for this allegation, DWR characterized  
24 "environmental commitments" as part of the Project; however the "environmental commitments"  
25 are plainly mitigation measures.

26           n.       The FEIR does not contain all of Petitioner's comments to the DEIR as  
27 required under CEQA.  
28

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

10           p.       DWR failed to demonstrate the Project is consistent with regional plans.  
11 For example, but not the exclusive basis for this allegation, DWR's finding that the Project is  
12 consistent with the Delta Reform Act of 2009 is not supported by substantial evidence.

13           q.       DWR failed to identify a range of reasonable alternatives to the Project and  
14 failed to meaningfully analyze reasonable alternatives to the Project that would reduce or avoid  
15 the significant environmental impacts of the proposed project. As examples, but not the exclusive  
16 basis for this allegation: the alternatives analysis is inconsistent with the Portfolio and the Delta  
17 Reform Act of 2009; DWR's two-level filtering criteria for the consideration of feasible  
18 alternatives to the Project lacks substantial evidence; DWR ignored evidence of viable,  
19 potentially feasible environmentally superior alternatives to the Project that could achieve the  
20 Project's objectives; and the FEIR is legally inadequate because it contains an overly narrow  
21 range of alternatives considering the nature of the Project and its environmental effects.

22           r.       DWR's selection of intake siting alternatives to the Project in the FEIR is  
23 unreasonable and lacks substantial evidence, and did not support a reasoned choice based on the  
24 purpose and requirements of CEQA, particularly in light of the Project's significant impacts on  
25 residents of the Town of Hood and surrounding historic Delta communities and given the  
26 changed and reasonably foreseeable conditions that will exist in the Delta during the Project's  
27 construction and operation due to climate change.  
28

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

6 t. DWR failed to analyze the physical and mental public health impacts from  
7 long-term exposure to prolonged Project-related noise pollution, despite having substantial  
8 evidence supporting further analysis, and failed to discuss environmental justice concerns in that  
9 regard. By failing to properly analyze those impacts and by omitting information necessary for  
10 the public and decision makers to understand the Project's impacts in that regard, the FEIR fails  
11 as an informational document.

12 u. DWR failed to analyze the full range of health impacts from Project-related  
13 air pollution, despite having substantial evidence supporting the need for further analysis, and  
14 failed to discuss environmental justice concerns in that regard. By failing to properly analyze  
15 those impacts and by omitting information necessary for the public and decision makers to  
16 understand the Project's impacts in that regard, the FEIR fails as an informational document.

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

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

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

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

26 z. The Statement of Overriding Considerations is not supported by substantial  
27 evidence. Any failure to disclose the true scope of Project impacts cannot be cured by a finding  
28 that an impact is significant and unavoidable, and DWR's finding that the Project's benefits

1 outweigh its significant impacts is not supported by substantial evidence due to the FEIR's failure  
2 to adequately evaluate and disclose all of the Project's significant impacts, among other flaws.

3 aa. The finding that the Project is the environmentally superior alternative is  
4 not supported by substantial evidence.

5 28. DWR violated CEQA by certifying the FEIR and approving the Project without  
6 conforming to the requirements of CEQA. DWR's certification of the FEIR and its approval of  
7 the Project must be set aside.

8 29. Given the prejudicial abuses of discretion applicable to the certification of the  
9 FEIR and approval of the Project, the FEIR is also inadequate for purposes of use by responsible  
10 agencies in evaluating Project-related permits and approvals. Findings as to the adequacy of the  
11 FEIR for purposes of responsible agency approvals are not supported by substantial evidence.

12 **SECOND CAUSE OF ACTION**  
13 ***Violation of the 1959 Delta Protection Act***

14 30. Petitioner realleges and incorporates by reference each and every allegation set  
15 forth above.

16 31. A controversy exists between DWR and Petitioner regarding the Project's  
17 compliance with/violation of the 1959 Delta Protection Act (Wat. Code, § 12200 et seq.).  
18 Petitioner is informed and believes, and on that basis alleges, that DWR believes the Project is in  
19 compliance with the 1959 Delta Protection Act, whereas Petitioner believes the Project is  
20 inconsistent with and violates the 1959 Delta Protection Act.

21 32. The 1959 Delta Protection Act: (a) requires the SWP and the CVP to provide  
22 salinity control and an adequate water supply for the Delta (Wat. Code, §§ 12201, 12202);  
23 (b) prohibits the export of water from the Delta to which in-Delta users are entitled and water  
24 which is necessary for salinity control (Wat. Code, § 12204); (c) requires that the water supply be  
25 sufficient "to maintain and expand agriculture, industry, urban and recreational development in  
26 the Delta" (Wat. Code, § 12201); (d) requires maintenance of a "common source of fresh water"  
27 in the Delta to serve both in-Delta water needs and export water needs when water surplus to the  
28 in-Delta needs is available (Wat. Code, § 12201); and (e) requires all releases of water from

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

3 33. 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; and the Project in many instances will result in the export of water from the  
9 Delta that directly deprives in-Delta water users of that supply and quality.

10 34. 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 35. 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 36. Petitioner realleges and incorporates by reference each and every allegation set  
19 forth above.

20 37. 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 is in compliance with the 1992 Delta Protection Act, whereas Petitioner believes the Project is  
24 inconsistent with and violates the 1992 Delta Protection Act.

25 38. 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 for the state for  
4 the Delta include to “[p]rotect, maintain, and, where possible, enhance and restore the overall  
5 quality of the delta environment, including, but not limited to, agriculture, wildlife habitat, and  
6 recreational activities.”

7 39. 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 40. 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 41. Petitioner realleges and incorporates by reference each and every allegation set  
16 forth above.

17 42. 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 is in compliance with the foregoing laws, whereas  
21 Petitioner believes the Project is inconsistent with and violates the foregoing laws.

22 43. 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.

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1 44. The Project is inconsistent with the foregoing policies and requirements and will  
2 divert fresh water from the Delta that will deprive the Delta and its communities and residents of  
3 their prior right to have that water flow into and through the Delta to meet their beneficial needs.

4 45. For the foregoing reasons, DWR failed to act in the manner required by law and  
5 prejudicially abused its discretion in approving the Project in violation of the Water Protection  
6 Act and area of origin protections.

7 **FIFTH CAUSE OF ACTION**  
8 *Violation Of The Delta Reform Act Of 2009 And The Delta Plan*

9 46. Petitioner realleges and incorporates by reference each and every allegation set  
10 forth above.

11 47. A controversy exists between DWR and Petitioner regarding the Project's  
12 compliance with/violation of the Delta Reform Act of 2009 (Wat. Code, § 85000 et seq.). DWR  
13 believes the Project is in compliance with the Delta Reform Act of 2009, whereas Petitioner  
14 believes the Project is inconsistent with and violates the Delta Reform Act of 2009.

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

22 49. The Project directly conflicts with the co-equal goal to protect, restore, and  
23 enhance the Delta ecosystem. The Project further conflicts with the requirement that the co-equal  
24 goal be achieved in a manner that protects and enhances the unique cultural, recreational, natural  
25 resource, and agricultural values of the Delta. The Project further is inconsistent with the Delta  
26 Reform Act's policy to reduce reliance on the Delta, the requirement to use the best available  
27 science in analyses, the directive to analyze potential effects on flood management, the  
28

1 regulations directing that a project should not impair the future potential for implementation of  
2 habitat restorations, and the policy to reduce conflicts with existing land uses.

3 50. For the foregoing reasons, DWR failed to act in the manner required by law and  
4 prejudicially abused its discretion in approving the Project, which is inconsistent with the Delta  
5 Reform Act of 2009.

6 **SIXTH CAUSE OF ACTION**  
7 ***Violation of the Public Trust Doctrine***

8 51. Petitioner realleges and incorporates by reference each and every allegation set  
9 forth above.

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

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

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

22 55. A controversy exists between DWR and Petitioner regarding the Project's  
23 compliance with and/or violation of the public trust doctrine. As explained in its public trust  
24 findings, DWR maintains the Project is in compliance with the public trust doctrine, whereas  
25 Petitioner maintains that it is not.

26 56. DWR's failure to adequately consider and analyze the public trust in approving the  
27 Project will harm trust resources and Petitioner's and the people's rights and interests in those  
28 resources and thus violates the public trust doctrine. As an example but not the exclusive basis

1 for this allegation, DWR has failed to analyze how the Project will impact and affect  
2 interconnected navigable waterways and the water's function as natural habitat, including impacts  
3 on wildlife (such as, for example, the protected greater sandhill crane), in light of the Project's  
4 reasonably foreseeable reduction of groundwater levels and DWR's failure to analyze the impact  
5 in light of land uses and projects that will be in existence when the Project is constructed and  
6 becomes operational. As another non-exclusive example, DWR has failed to adequately analyze  
7 how the Project will affect Delta water quality, including the formation of harmful algal blooms,  
8 that will have substantial adverse effects on the public trust uses of recreation and fishing.

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner prays for the following relief:

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

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

- 21 a. Violates the state laws enacted to protect the Delta, as discussed herein;  
22 b. Is inconsistent with the Delta Reform Act of 2009; and  
23 c. Violates the public trust doctrine;

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

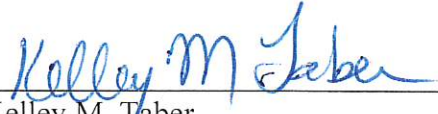
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4. For a peremptory writ of mandate directing DWR to:
    - a. Vacate and set aside its certification of the FEIR for the Project and all approvals of the Project;
    - b. Suspend any and all activity pursuant to DWR's approval of the Project that 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 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

DATED: January 19, 2024

By:   
Kelley M. Taber  
Attorneys for Petitioner and Plaintiff  
County of Sacramento