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

14 SUPERIOR COURT OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

17 SACRAMENTO AREA SEWER DISTRICT, a  
California public agency,

18  
19 Petitioner and Plaintiff,

20 v.

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

22 Respondent and Defendant,

23  
24 DOES 1 through 50,

25 Real Parties in Interest.

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]



1 will provide a healthy water supply to over 5,000 acres of riparian and wetland habitats; enhance  
2 habitats for a variety of threatened species, including the Sandhill Crane, Swainson's Hawk, and  
3 Giant Garter Snake; increase streamflow in the Cosumnes River, supporting a longer migration  
4 window for Chinook Salmon; reduce salinity in the Sacramento and Delta waterways; deliver up  
5 to 50,000 acre-feet per year of reliable recycled water to irrigate more than 16,000 acres of  
6 agricultural lands; stabilize water supply for the region's farms, ranches, and rural landscapes;  
7 restore and manage groundwater in partnership with area landowners, farmers, and ranchers; and  
8 support agriculture in and around the program area. The District has completed the feasibility  
9 study, secured water rights, completed the CEQA and National Environmental Policy Act  
10 environmental documents, obtained all necessary environmental permits, annexed the program  
11 area into the District's service area for recycled water delivery, received Letters of Intent from  
12 growers representing 100 percent of the demand, executed agreements with the California  
13 Department of Fish and Wildlife (CDFW) and the State Water Resources Control Board  
14 (SWRCB) to provide quantified ecosystem and water quality benefits, received final funding  
15 awards in excess of \$290 million in state funding and \$30 million in federal funding, completed  
16 the majority of the project designs, completed construction bidding for several project elements,  
17 and is in the process of obtaining the remaining construction bids. Mobilization for the first phase  
18 of construction of Harvest Water has begun and recycled water delivery is anticipated to  
19 commence in 2026. The Project's alignment and infrastructure will reduce or eliminate elements  
20 of Harvest Water's water delivery and habitat improvements and will significantly impair or sever  
21 the functional habitat and its connectivity between Stone Lakes National Wildlife Refuge and  
22 Consumnes River Preserve, leading to direct environmental and ecological impacts in the  
23 program area when the Project is built. In addition to the environmental impacts, if the impacts  
24 from the Project cause the District to fail to meet its contractual obligations with CDFW and  
25 SWRCB to provide ecosystem and water quality benefits, there will be significant harm to the  
26 District, as well as the citizens of the State, who approved Proposition 1 with the intent that the  
27 State administer water storage investment program funds to achieve contractually quantified  
28 public benefits. Despite the District's attempts to educate and resolve the foregoing concerns

1 with DWR, as discussed herein, DWR has not adequately or appropriately analyzed, and has not  
2 mitigated, the Project's impacts to Harvest Water.

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

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

#### 24 PARTIES

25 6. The District is a public agency formed and existing under division 5, part 3  
26 (§ 4700 et seq. of the Health & Saf. Code). The District was previously named Sacramento  
27 Regional County Sanitation District. The District is governed by a Board of Directors composed  
28 of the five members of the Sacramento County Board of Supervisors, a member of the Yolo

1 County Board of Supervisors, five members from the Council of the City of Sacramento, two  
2 members from the Council of the City of Elk Grove, and one Councilmember from each of the  
3 cities of Citrus Heights, Folsom, Rancho Cordova, and West Sacramento. Since 1978 the District  
4 has owned and operated a wastewater treatment plant, located in Elk Grove, CA, that was known  
5 as the Sacramento Regional Wastewater Treatment Plant (SRWTP). As of May 19, 2023, the  
6 treatment plant is known as the EchoWater Resource Recovery Facility or “EchoWater Facility,”  
7 reflecting the District’s \$1.7 billion investment in promoting responsible reuse of wastewater  
8 consistent with the State’s policy to promote water recycling. The District serves approximately  
9 1.6 million customers within its service area. The EchoWater Facility thus receives and treats  
10 wastewater from a large population in the urban Sacramento region. The EchoWater Facility is  
11 permitted to and does discharge highly treated wastewater into the Sacramento River in the  
12 vicinity of Freeport.

13 7. DWR is, and at all times mentioned herein was, a public agency of the State of  
14 California, formed and existing under the California Water Code, with its principal place of  
15 business in the County of Sacramento. DWR operates the SWP subject to permits issued to it by  
16 the SWRCB. DWR is, and at all times relevant herein was, charged with the faithful performance  
17 of all applicable state, federal, and other laws, including CEQA and the CEQA Guidelines and the  
18 public trust doctrine. DWR is the lead agency under CEQA for the preparation of the EIR and for  
19 approval of the Project.

20 8. Does 1 to 50, inclusive, are persons or entities who may have, or may claim to  
21 have, interest in the Project and have a legal interest in the outcome of these proceedings, the  
22 exact nature of which is presently unknown to Petitioner. The true names or capacities, whether  
23 individual, corporate, associate, or otherwise, of Does 1 to 50, inclusive, are unknown to the  
24 District, who therefore sues these parties by fictitious names. If necessary, the District will  
25 request leave to amend this Petition to show their true names and capacities when ascertained.

26 **JURISDICTION AND VENUE**

27 9. This Court has jurisdiction over this action pursuant to Code of Civil Procedure  
28 sections 525 et seq., 1060, 1085 and 1094.5, Public Resources Code sections 21168, 21168.5,

1 29700 et seq., Water Code sections 12200 et seq., 11460 et seq., 1215 et seq., 85000 et seq., and  
2 the public trust doctrine. This Court has the authority to issue a writ of mandate directing DWR  
3 to vacate and set aside its approval of the Project and certification of the FEIR for the Project  
4 under Code Civil Procedure sections 1085 and 1094.5. This Court further has authority to issue  
5 the declaration and injunctions requested herein under Code of Civil Procedure sections 525 et  
6 seq. and 1060.

7 10. Venue properly lies in the Sacramento County Superior Court pursuant to Code of  
8 Civil Procedure sections 393, 394, and 395 because DWR is a state agency, DWR's principal  
9 offices are located in Sacramento, and Sacramento County is where many of the Project's  
10 environmental impacts will occur and where the Project is proposed to be constructed.

11 **STANDING**

12 11. As described herein, Petitioner is beneficially interested in the subject matter of  
13 this proceeding because the Project will adversely affect the District's operation of essential  
14 public services and Harvest Water. Petitioner has a direct and substantial beneficial interest in  
15 ensuring DWR complies with laws relating to environmental protection, and Petitioner is  
16 substantially adversely affected by DWR's failure to comply with CEQA and the public trust  
17 doctrine.

18 12. By certifying a FEIR that is not supported by substantial evidence, approving the  
19 Project when the Project was not adequately analyzed under CEQA, and otherwise failing to  
20 comply with CEQA's substantive and procedural requirements, DWR has placed the District's  
21 operations and Harvest Water at a significant risk. The approval of the Project further violates or  
22 is inconsistent with other state laws and the public trust doctrine, as discussed herein. Petitioner  
23 thus has standing to assert the claims raised in this Petition.

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25 13. As explained herein, Petitioner actively participated throughout the administrative  
26 process that led to DWR's decision to certify the FEIR for the Project. Petitioner participated by  
27 submitting comment letters and relevant evidence with regard to the draft EIR (DEIR) and FEIR.  
28 Petitioner's comments to the DEIR and FEIR are attached hereto as Attachments B and C.

1 Petitioner has thus objected to Project approval during DWR's proceedings and may assert issues  
2 that were raised by Petitioner and other parties.

3 14. Petitioner sought to resolve its concerns and objections with DWR. Although the  
4 District appreciates that DWR ultimately reached out to discuss the District's concerns, this  
5 outreach did not occur until the six weeks preceding DWR's certification of the FEIR, three and a  
6 half years after the District submitted its comments on the notice of preparation for the DEIR, and  
7 nearly a year after the District submitted its comments on the DEIR. The District and its  
8 consultants subsequently twice met with DWR to explain its concerns and objections and, among  
9 other things, to educate DWR about Harvest Water. The District explained in detail why the  
10 Project would have significant negative impacts on the ecological and environmental benefits  
11 created by Harvest Water, and how such substantial impacts will preclude the District from  
12 meeting its public benefit objectives, as required under the California Water Commission's Water  
13 Investment Storage Program. Despite this information and having no adequate or reasoned  
14 response to the impacts identified, DWR nonetheless moved forward with certifying the FEIR  
15 and approving the Project.

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

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

21 **NOTICE**

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

26 **ELECTION TO PREPARE RECORD**

27 18. Petitioner elects to prepare the administrative record in this proceeding pursuant to  
28 Public Resources Code section 21167.6, subdivision (b)(2) and any other applicable laws. The

1 Notice of Election to Prepare the Administrative Record is filed concurrently with this petition  
2 and complaint.

3 **ATTORNEY FEES**

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

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

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

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

17 22. In light of DWR's CEQA violations in certifying the FEIR and approving the  
18 Project, any action regarding the construction or operation of the Project will irreparably harm the  
19 environment as described in this Petition, to the detriment of Petitioner and the Delta's residents,  
20 businesses, and water users.

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

25 24. A stay or injunction of DWR actions relating to the Project would not be against  
26 the public interest because (a) DWR is required by CEQA to conduct an adequate environmental  
27 review of the Project before taking any actions to approve it, (b) construction and operation of the  
28 Project will have significant irreparable impacts on the environment and persons and such

1 activities, along with the expenditure of funds in furtherance of those activities, will prejudice  
2 DWR's consideration of alternatives to the Project in any remedial CEQA review conducted  
3 pursuant to a decision of this Court, and (c) DWR will not be harmed by a stay or injunction.

4 **FIRST CAUSE OF ACTION**  
5 ***Violations of CEQA***

6 25. Petitioner realleges and incorporates by reference each and every allegation set  
7 forth above.

8 26. Petitioner and other commenters raised substantial comments in response to the  
9 DEIR and FEIR. As noted, Petitioner's comments to the DEIR and FEIR are attached hereto as  
10 Attachments B and C. The attachments provide greater specificity regarding the allegations  
11 herein. Petitioner hereby incorporates its and other commenters' comments to the DEIR and  
12 FEIR, DWR's responses thereto, and further submittals regarding the Project required to be  
13 included in the Administrative Record.

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

19 a. DWR failed to consider, analyze, and mitigate the Project's impacts to  
20 Harvest Water, particularly, but not exclusively, as to the Project's reduction in groundwater  
21 levels in the Harvest Water project area, where Harvest Water is contractually obligated to  
22 increase groundwater levels. Harvest Water cannot add additional water to compensate for the  
23 reduced benefit/impact of Project-induced groundwater level lowering. This impact further  
24 demonstrates the inadequacy of the groundwater impact threshold of significance employed in the  
25 FEIR because it fails to capture the Project's significant impacts on Harvest Water and  
26 groundwater-dependent ecosystems (GDEs).

27 b. DWR failed to adequately analyze the Project's potential direct, indirect  
28 and cumulative impacts in multiple key areas and, accordingly, also failed to adequately consider

1 and identify appropriate associated mitigation measures and alternatives. As examples, but not  
2 the exclusive basis for this allegation, DWR failed to treat impacts to water supply as an impact  
3 for analysis in the FEIR and did not adequately consider the impacts related to groundwater  
4 reduction and water quality.

5 c. DWR failed to provide a clear, stable, and consistent project description.  
6 For example, but not to be considered the exclusive basis for this allegation, the project  
7 description in the FEIR does not describe the full extent of the Project's reasonably foreseeable  
8 operations, does not contain the same limitations included in modeling, and includes undefined  
9 and vague terms. An adequate project description is essential to understanding and drawing  
10 meaningful conclusions about the Project's effects on the Delta environment. The Project's  
11 operations will, for example, affect water quality, which in turn will affect the District's  
12 operations, among other things. The degradation of water quality will result in detrimental  
13 changes to Delta salinity and residence time, and the reasonably foreseeable need for increased  
14 surface water treatment or limited diversions altogether at certain times, all of which will  
15 compromise the District's operations and possibly lead to the requirement to construct or  
16 implement new treatment facilities or technologies, which themselves could result in significant  
17 environmental impacts that were not acknowledged in the FEIR.

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

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

1 findings and modeling regarding, including but not limited to, surface water impacts and water  
2 quality impacts pertaining to, among other things, cyanobacteria harmful algal blooms (CHABs),  
3 mercury, and electrical conductivity; and (7) DWR's method of computing and presenting  
4 summary statistics is flawed and lacks substantial evidence.

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

12 g. DWR adopted thresholds of significance that are not supported by  
13 substantial evidence and reduce the potential significance of Project impacts, including but not  
14 limited to impacts on water quality and groundwater. The FEIR further fails as an informational  
15 document because DWR failed to explain why it adopted certain thresholds of significance.

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

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

25 j. The size and structure of the FEIR frustrates public participation in  
26 violation of CEQA and fails to present information in a manner reasonably calculated to inform  
27 the public. As examples but not the exclusive basis for this allegation: the location of stated  
28 evidence supporting findings is not identified; the analyses of impacts are scattered throughout,

1 with conclusions often far-removed from the evidence that purportedly supports them; or no  
2 evidence is presented to support findings.

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

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

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

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

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 Project. As examples, but not the exclusive basis for  
16 this allegation: the alternatives analysis is inconsistent with the Portfolio and the Delta Reform  
17 Act of 2009; DWR's two-level filtering criteria for the consideration of feasible alternatives to the  
18 Project lacks substantial evidence; DWR ignored evidence of viable, potentially feasible  
19 environmentally superior alternatives to the Project that could achieve the Project's objectives;  
20 and the FEIR is legally inadequate because it contains an overly narrow range of alternatives  
21 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, especially given the changed and reasonably foreseeable  
25 conditions that will exist in the Delta during the Project's construction and operation due to  
26 climate change.

27           s.       The alternatives analysis fails to comply with CEQA because the  
28 alternatives evaluated in the EIR were not developed or selected for consideration based on

1 comparison with the DEIR's proposed project, as required by CEQA. Rather, the DEIR  
2 alternatives were developed based on a fundamentally different (and infeasible) project, the  
3 proposed project as described in the Notice of Preparation.

4 t. DWR failed to properly describe the baseline physical conditions in its air  
5 pollution analysis, and thus failed to inform the public regarding the Project's potential  
6 environmental impacts as to air pollution and consistency with regional air quality plans.

7 u. DWR failed to use the best available and sound science to analyze Project  
8 impacts, including but not limited to, for example, water quality.

9 v. DWR's public trust findings are not supported by substantial evidence.

10 w. DWR's findings that the Project is consistent with the Portfolio are not  
11 supported by substantial evidence.

12 x. The Statement of Overriding Considerations is not supported by substantial  
13 evidence. Any failure to disclose the true scope of Project impacts cannot be cured by a finding  
14 that an impact is significant and unavoidable, and DWR's finding that the Project's benefits  
15 outweigh its significant impacts is not supported by substantial evidence due to the FEIR's failure  
16 to adequately evaluate and disclose all of the Project's significant impacts, among other flaws.

17 y. The finding that the Project is the environmentally superior alternative is  
18 not supported by substantial evidence.

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

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

26 ///

27 ///

28 ///

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

1  
2           30.     Petitioner realleges and incorporates by reference each and every allegation set  
3 forth above.

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

9           32.     The 1959 Delta Protection Act: (a) requires the SWP and the CVP to provide  
10 salinity control and an adequate water supply for the Delta (Wat. Code, §§ 12201, 12202);  
11 (b) prohibits the export of water from the Delta to which in-Delta users are entitled and water  
12 which is necessary for salinity control (Wat. Code, § 12204); (c) requires that the water supply be  
13 sufficient "to maintain and expand agriculture, industry, urban and recreational development in  
14 the Delta" (Wat. Code, § 12201); (d) requires maintenance of a "common source of fresh water"  
15 in the Delta to serve both in-Delta water needs and export water needs when water surplus to the  
16 in-Delta needs is available (Wat. Code, § 12201); and (e) requires all releases of water from  
17 storage reservoirs into the Delta for export from the Delta to be integrated to the "maximum  
18 extent possible" in order to fulfill the objectives of the Act (Wat. Code, § 12205).

19           33.     The Project violates the 1959 Delta Protection Act in numerous respects, including  
20 but not limited to: the Project, by design, directly circumvents the maintenance and provision of  
21 the "common source of freshwater" (or "common pool") through the construction of intakes and a  
22 tunnel in the northern Delta to enable DWR to divert and export substantial amounts of  
23 Sacramento River freshwater directly into a tunnel that would otherwise flow into that common  
24 pool in the absence; and the Project in many instances will result in the export of water from the  
25 Delta that directly deprives in-Delta water users of that supply and quality.

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



**FOURTH CAUSE OF ACTION**

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

41. Petitioner realleges and incorporates by reference each and every allegation set forth above.

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

43. Water Code section 11460 of the Watershed Protection Act addresses the prior rights to water reasonably required to adequately supply the beneficial needs of a watershed, area in which water originates (or immediately adjacent areas thereto which can conveniently be supplied with water therefrom), or any of the inhabitants or property owners therein. Water Code section 1216 likewise protects water from export, as discussed therein.

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

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

**FIFTH CAUSE OF ACTION**

***Violation of the Delta Reform Act of 2009 and the Delta Plan***

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

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

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1 is to preserve and protect public trust resources for the common use of the people, as well as  
2 water's function as natural habitat, including protecting habitat for wildlife.

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

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

11 56. DWR's failure to adequately consider and analyze the public trust in approving the  
12 Project will harm trust resources and Petitioner's and the people's rights and interests in those  
13 resources and thus violates the public trust doctrine. As an example but not the exclusive basis  
14 for this allegation, DWR has failed to analyze how the Project will impact and affect  
15 interconnected navigable waterways and the water's function as natural habitat, including impacts  
16 on wildlife (such as, for example, the protected greater sandhill crane), in light of the Project's  
17 reasonably foreseeable reduction of groundwater levels and DWR's failure to analyze the impact  
18 in light of land uses and projects that will be in existence when the Project is constructed and  
19 becomes operational, such as Harvest Water. As another non-exclusive example, DWR has failed  
20 to adequately analyze how the Project will affect Delta water quality, including the formation of  
21 harmful algal blooms.

22 57. By failing to adequately consider, analyze and protect the public trust, DWR  
23 violated the State's duty to protect public trust resources. The inadequacy of the FEIR with  
24 regard to the public trust findings also means that responsible agencies with an obligation to  
25 protect the public trust, including but not limited to the SWRCB and CDFW, will not have  
26 sufficient information and evidence to conduct their own legally adequate public trust analysis  
27 and findings, or issue any discretionary approvals for the Project.

28

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays for the following relief:

1. For an order staying the effect of DWR's certification of the FEIR and approval of the Project;
  2. For a declaration under Code of Civil Procedure section 1060 that DWR's approval of the Project:
    - a. Violates the state laws enacted to protect the Delta, as discussed herein;
    - b. Is inconsistent with the Delta Reform Act of 2009; and
    - c. Violates the public trust doctrine;
  3. For issuance of a temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by DWR pursuant to DWR's approval of the Project and certification of the FEIR for the Project until DWR has fully complied with all requirements of CEQA and all other applicable state and local laws, policies, and regulations;
  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,

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

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DATED: January 19, 2024

By: Kelley M. Taber  
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