

1 E. Robert Wright (SBN 51861)  
2 Sierra Club California  
3 909 12th Street, Suite 202  
4 Sacramento, CA 95814  
5 Tel: (916) 557-1104  
6 Fax: (916) 557-9669  
7 Email: bwrightatty@gmail.com

8 *Attorney for Petitioners and Plaintiffs Sierra Club, Friends*  
9 *of the River, California Water Impact Network, Planning*  
10 *and Conservation League, AquAlliance, Pacific Coast*  
11 *Federation of Fishermen’s Associations, Institute for*  
12 *Fisheries Resources, and California Sportfishing*  
13 *Protection Alliance*

14 *(additional counsel on following pages)*

15 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **IN AND FOR THE COUNTY OF SACRAMENTO**

17 Sierra Club; Center for Biological Diversity;  
18 Friends of the River; California Water Impact  
19 Network; Planning and Conservation League;  
20 AquAlliance; Pacific Coast Federation of  
21 Fishermen’s Associations; Institute for Fisheries  
22 Resources; California Sportfishing Protection  
23 Alliance; North Coast Rivers Alliance; Friends of  
24 Stone Lakes National Wildlife Refuge; Save Our  
25 Sandhill Cranes; Environmental Council of  
26 Sacramento; and Sacramento Audubon Society,

27 **Petitioners and Plaintiffs,**

28 **vs.**

California Department of Water Resources; and  
DOES 1-20,

**Respondents and Defendants,**

DOES 21-50,

**Real Parties in Interest.**

Case No.:

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(Code of Civ. Proc. §§ 1060, 1085, 1094.5;  
Water Code §§ 85000 et seq., Gov. Code  
11342.1; Pub. Resources Code §§ 21000 et seq.;  
Fish and Game Code § 3511)

**CEQA CASE**

Action Filed: January 19, 2024

1 ***Additional counsel:***

2 John Buse (SBN 163156)  
3 Frances Tinney (SBN 346927)  
4 CENTER FOR BIOLOGICAL DIVERSITY  
5 1212 Broadway, Suite 800, Oakland, CA 94612  
6 Tel: (510) 844-7100  
7 Fax: (510) 844-7150  
8 Email: [jbuse@biologicaldiversity.org](mailto:jbuse@biologicaldiversity.org)  
9 [ftinney@biologicaldiversity.org](mailto:ftinney@biologicaldiversity.org)

10 *Attorneys for Petitioners and Plaintiffs Center for  
11 Biological Diversity, Friends of Stone Lakes National  
12 Wildlife Refuge, Save Our Sandhill Cranes, Environmental  
13 Council of Sacramento, North Coast Rivers Alliance, and  
14 Sacramento Audubon Society*

15 Adam Keats (SBN 191157)  
16 LAW OFFICE OF ADAM KEATS, PC  
17 303 Sacramento Street, 2nd Floor  
18 San Francisco, CA 94111  
19 Tel: (415) 964-0070  
20 Email: [adam@keatslaw.org](mailto:adam@keatslaw.org)

21 *Attorney for Petitioners and Plaintiffs California Water  
22 Impact Network, Planning and Conservation League,  
23 AquAlliance, and California Sportfishing Protection  
24 Alliance*

## INTRODUCTION

1  
2           1.     Petitioners and Plaintiffs Sierra Club, Center for Biological Diversity, Friends of the  
3 River, Planning and Conservation League, California Water Impact Network, AquAlliance, Pacific  
4 Coast Federation of Fishermen’s Associations, Institute for Fisheries Resources, California  
5 Sportfishing Protection Alliance, North Coast Rivers Alliance, Friends of Stone Lakes National  
6 Wildlife Refuge, Save Our Sandhill Cranes, Environmental Council of Sacramento, and Sacramento  
7 Audubon Society (“Petitioners”) seek a writ of mandate and declaratory and injunctive relief under  
8 California Code of Civil Procedure sections 1085, 1094.5 and 1060, and Government Code section  
9 11350 directing the California Department of Water Resources (“DWR”) to vacate its approval of the  
10 Delta Conveyance Project (or the “Project”), the December 21, 2023, findings and Statement of  
11 Overwriting Considerations for the Project and the December 21, 2023, certification of the Final  
12 Environmental Impact Report (“EIR”) for the Project, and to revise its findings to conform with the  
13 law.

14           2.     The Delta Conveyance Project would divert very large quantities of fresh water from the  
15 San Francisco Bay-Delta estuary for export south. The Project would initially consist of two new  
16 water intakes each capable of diverting 3,000 cubic feet per second of water from the Sacramento  
17 River in the North Delta into a 36-foot wide, 45-mile long, 150-foot-deep tunnel (“Tunnel”), which  
18 would transport the water to existing pumping plants in the south Delta. The Tunnel would have the  
19 capacity to transport 6,000 cubic feet per second of water. Due to the new points of diversion in the  
20 north Delta, freshwater flows that presently contribute to water quality, water supply, fish, fish habitat,  
21 Delta agriculture, and public health by flowing through the already impaired Delta before being  
22 diverted, in what is known as “through-Delta conveyance,” would instead no longer provide these  
23 benefits within the lower Sacramento River, sloughs, and Delta. The new water intakes and Tunnel  
24 would add to, rather than replace, the existing pumping facilities in the Delta of the Central Valley  
25 Project and State Water Project, in what is known as “dual conveyance.”

26           3.     The construction and operation of the Project will significantly degrade environmental  
27 conditions in the San Francisco Bay-Delta estuary, including reduced flows in the Sacramento River  
28 and Bay-Delta estuary, increased salinity levels, reduced food supply, increased harmful algal blooms,

1 harm to endangered and threatened fish species, and adverse modification of their designated critical  
2 habitat.

3 4. DWR’s approval of the Project and certification of a Final Environmental Impact Report  
4 (“EIR”) for the Project violates the California Environmental Quality Act (Pub. Res. Code § 21000 et  
5 seq., herein “CEQA”), the Delta Reform Act, and the state’s fully-protected bird statute. By approving  
6 the Project that will have severe and irreversible adverse effects on the already stressed Bay-Delta  
7 system, and without fairly evaluating feasible alternatives that could avoid or minimize the worst of  
8 these effects, DWR has abused its discretion and failed to act in the manner required by law.  
9 Petitioners seek a writ of mandate setting aside the Project approvals and certification of the Project’s  
10 EIR.

### 11 **THE PARTIES**

12 5. Petitioner SIERRA CLUB is a nonprofit organization of approximately 146,000  
13 members in California and over 690,000 members in the United States. Sierra Club is dedicated to  
14 exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the  
15 responsible use of the earth’s ecosystems and resources; to educating and encouraging humanity to  
16 protect and restore the quality of the natural and human environment; and to using all lawful means to  
17 carry out these objectives. Sierra Club’s concerns encompass our members continued ability to enjoy  
18 the unique aesthetic and recreational nature of the Bay-Delta ecosystem, our desire for California to  
19 develop a climate change-resilient water system that is protective of both natural environments and  
20 fulfilling the human right to water, and the proper application of CEQA to provide the public with  
21 vital information about decisions made concerning their health and mitigation from environmental  
22 harms. Sierra Club members reside in use areas that would be adversely affected by the Project for  
23 wildlife observation, recreation, and aesthetic enjoyment. Sierra Club members are also ratepayers  
24 who will pay for construction of the Project if it is approved. The Club’s particular interest in this case  
25 and the issues which the case concerns are addressed herein.

26 6. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“The Center”) is a non-profit,  
27 public interest organization with over 89,000 active members. The Center has offices in Oakland, Los  
28 Angeles, and Joshua Tree, California, as well as offices in Arizona, Florida, New Mexico, Oregon,

1 Colorado, and Washington, D.C. The Center and its members are dedicated to protecting diverse  
2 native species and habitats through science, policy, education, and environmental law. The Center's  
3 members reside and own property throughout California as well as those areas to be served by the  
4 Project, and use the waters and lands affected by the proposed Project for wildlife observation,  
5 recreation, scientific research, environmental education, and aesthetic enjoyment.

6 7. Petitioner and Plaintiff FRIENDS OF THE RIVER ("FOR") is a non-profit organization  
7 dedicated to preserving and restoring California's rivers, streams, and their watersheds as well as  
8 advocating for sustainable water management. FOR accomplishes this goal by influencing public  
9 policy and inspiring citizen action through grassroots organizing. FOR was founded in 1973 during the  
10 struggle to save the Stanislaus River from the New Melones Dam. Following that campaign, the group  
11 grew to become a statewide river conservation organization. FOR currently has nearly 3,000 members.  
12 Members of FOR enjoy the scenic beauty of the Delta and the Sacramento River and its tributaries and  
13 sloughs upstream from the Delta and raft, kayak, boat, fish, and swim in these waters.

14 8. Petitioner and Plaintiff CALIFORNIA WATER IMPACT NETWORK ("C-WIN") is a  
15 California non-profit public benefit organization with its principal place of business in Santa Barbara,  
16 California. C-WIN's organization purpose is the protection and restoration of fish and wildlife  
17 resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural  
18 environmental resources and uses of the rivers and streams of California, including the Bay-Delta, its  
19 watershed and its underlying groundwater resources. C-WIN has members who reside in, use, and  
20 enjoy the Bay-Delta and inhabit and use its watershed. They use the rivers of the Central Valley and  
21 the Bay-Delta for nature study, recreation, and aesthetic enjoyment.

22 9. Petitioner and Plaintiff PLANNING AND CONSERVATION LEAGUE ("PCL") is a  
23 nonprofit advocacy organization empowered to protect and restore California's natural environment  
24 and to promote and defend the public health and safety of the people of California, through legislative,  
25 administrative, and judicial action. Founded in 1965, PCL was the first organization devoted to  
26 bettering Californians' quality of life through environmental legislation. One of the organization's  
27 earliest accomplishments was the enactment in 1970 of the California Environmental Quality Act  
28 ("CEQA"), which PCL helped draft and has continually supported over the years, and which lies at the

1 heart of this action. As a party and an *amicus curiae*, PCL—in behalf of its twenty-seven institutional  
2 members and thousands of individual members—has contributed to some of the leading cases  
3 interpreting CEQA’s provisions. PCL has also submitted detailed comments addressing environmental  
4 review issues in numerous proceedings before public agencies, including those culminating in the final  
5 agency decisions challenged here. Beyond agency proceedings and the courtroom, PCL has published  
6 and updated *The Community Guide to CEQA* and has sponsored CEQA workshops throughout the  
7 state. These workshops advise interested individuals, governmental and non-governmental  
8 organizations, and locally elected and appointed officials about CEQA’s two-fold purpose of  
9 environmental protection and informed self-government. PCL members reside and own property  
10 throughout California as well as those areas to be served by the Project, and use the waters and lands  
11 affected by the proposed Project.

12 10. Petitioner and Plaintiff PACIFIC COAST FEDERATION OF FISHERMEN’S  
13 ASSOCIATIONS (“Pacific Coast Fishermen”) is a nonprofit membership organization incorporated in  
14 1976 with headquarters located in San Francisco, California. Pacific Coast Fishermen is composed of  
15 more than 14 separate commercial fishing and vessel owners’ associations situated along the West  
16 Coast of the United States. By virtue of its combined membership of approximately 750 fishermen and  
17 women, the Pacific Coast Fishermen is the single largest commercial fishing organization on the West  
18 Coast. Pacific Coast Fishermen represents the majority of California’s organized commercial salmon  
19 fishermen and has been an active advocate for the protection of Pacific salmon and their spawning,  
20 rearing and migratory habitat for more than 30 years. Pacific Coast Fishermen and its members would  
21 be harmed by the proposed Project because it would threaten their commercial fishing livelihoods, a  
22 public trust use that depends on sustainable management of the salmonid fisheries of the Delta and  
23 protection and restoration of their habitat.

24 11. Petitioner and Plaintiff INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a non-  
25 profit, tax exempt organization that works to protect and restore salmon and other fish populations and  
26 the sustainable public trust uses including fishing that depend on them. IFR maintains its principal  
27 place of business in San Francisco, California. IFR both funds and manages many of fish habitat  
28 protection programs and initiatives. In that capacity, IFR advocates for reforms to protect fish health

1 and habitat throughout the West Coast of the United States and has successfully advocated for dam  
2 removals, improved pesticide controls, better forestry stream protection standards, and enhanced  
3 marine and watershed conservation regulations throughout the West Coast. IFR has worked tirelessly  
4 for years to restore and enhance the Delta and its beleaguered fish and wildlife. IFR and its members  
5 will be directly and indirectly injured by the Project's failure to adequately protect and restore the  
6 imperiled fisheries of the Delta.

7 12. Petitioner and Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
8 ("CSPA") is a California non-profit public benefit organization with its principal place of business in  
9 Berkeley, California. CSPA's organizational purpose is the protection, preservation, and enhancement  
10 of fisheries and associated aquatic and riparian ecosystems of California's waterways, including  
11 Central Valley rivers leading into the Bay-Delta. This mission is implemented through active  
12 participation in water rights and water quality processes, education and organization of the fishing  
13 community, restoration efforts, and vigorous enforcement of environmental laws enacted to protect  
14 fisheries, habitat and water quality. Members of CSPA reside along the Central Valley watershed and  
15 in the Bay-Delta where they view, enjoy, and routinely use the Delta ecosystem for boating, fishing,  
16 and wildlife viewing. CSPA's members derive significant and ongoing use and enjoyment from the  
17 aesthetic, recreational, and conservation benefits of the Bay-Delta ecosystem.

18 13. Petitioner and Plaintiff AQUALLIANCE is a California public benefit corporation. Its  
19 mission is to defend northern California waters and the ecosystems these waters support and to  
20 challenge threats to the hydrologic health of the Sacramento River watershed. This includes escalating  
21 attempts to divert and withdraw more water from the hydrologic region. AquAlliance's members  
22 include farmers, scientists, businesses, educators, and residents all of whom have significant financial,  
23 recreational, scientific, aesthetic, educational, and conservation interests in the aquatic and terrestrial  
24 environments that rely on waters of the Sacramento River Watershed and Bay-Delta estuary. This  
25 hydrologic system provides water for orchards, homes, gardens, businesses, wetlands, streams, rivers,  
26 terrestrial habitat, and myriad species, which in turn allows AquAlliance members to live, farm, fish,  
27 hunt, cycle, photograph, camp, swim, and invest in northern California.

28 14. Petitioner and Plaintiff NORTH COAST RIVERS ALLIANCE ("North Coast Rivers")

1 is a non-profit unincorporated association with members throughout Northern California. North Coast  
2 Rivers was formed for the purpose of protecting California’s rivers and their watersheds from the  
3 adverse effects of excessive water diversions, ill-planned urban development, harmful resource  
4 extraction, pollution, and other forms of degradation. Its members use and enjoy California’s rivers  
5 and watersheds for recreational, aesthetic, scientific study, and related non-consumptive public trust  
6 uses.

7           15.     Petitioner and Plaintiff FRIENDS OF STONE LAKES NATIONAL WILDLIFE  
8 REFUGE (“Friends”) is a membership-based California nonprofit public benefit corporation organized  
9 for the purposes of protecting, promoting and enhancing the Stone Lakes National Wildlife Refuge  
10 (“Stone Lakes NWR” or “Refuge”), which will be severely and adversely affected by the unmitigated  
11 impacts associated with the construction and operation of the Project. Members of Friends use the  
12 Refuge, the greater Delta, the Sacramento River, and the San Joaquin river to hike, birdwatch, view  
13 wildlife, engage in scientific study, including monitoring activities, and promoting education about  
14 Delta wildlife conservation, especially of avian species. Friends’ members have enjoyed viewing  
15 wildlife, including special status and/or fully-protected species such as the greater sandhill crane, in  
16 the Refuge and elsewhere in the Delta. This species’ numbers and vitality depend on an intact and  
17 healthy Delta ecosystem, and the continued existence of suitable habitat. Where elements of the  
18 ecosystem suffer, or the greater sandhill crane population suffers adverse impacts, Friends’ members’  
19 recreational uses and aesthetic enjoyment of those areas are reduced through decreased opportunities  
20 to observe wildlife.

21           16.     Petitioner and Plaintiff SAVE OUR SANDHILL CRANES (“SOS Cranes”) is a  
22 501(c)(3) non-profit organization that formed over a decade ago to protect sandhill crane wintering  
23 habitat in the Sacramento region through outreach, education, and direct engagement in both policy  
24 and projects that effect that habitat. SOS Cranes is especially concerned about threats to the remaining  
25 suitable winter habitats for cranes in the Central Valley of California. The Delta Conveyance Project,  
26 combined with urban development and shifts from annual row crops to permanent crops would  
27 dramatically diminish what little remains of the winter migratory habitat of the sandhill cranes in the  
28 Delta, and threatens to directly and unlawfully kill, harm, and otherwise “take” cranes, which are fully



1 protected birds under California law. Members of SOS Cranes use the Refuge, and the greater Delta,  
2 the Sacramento River, and the San Joaquin river to hike, birdwatch (including viewing and enjoying  
3 the presence of fully protected greater sandhill cranes), view wildlife, engage in scientific study,  
4 including monitoring activities, and promoting education about Delta wildlife conservation, especially  
5 of avian species. Where elements of the ecosystem suffer, or the greater sandhill crane population  
6 suffers adverse impacts, SOS Cranes' members' recreational uses and aesthetic enjoyment of those  
7 areas are reduced through decreased opportunities to observe wildlife.

8 17. Petitioner and Plaintiff ENVIRONMENTAL COUNCIL OF SACRAMENTO  
9 (“ECOS”) is a nonprofit organization that gives Sacramento environmental leaders a place to come  
10 together to create an action-oriented coalition for the region. ECOS is a hybrid organization that has  
11 both 19 organizational and approximately 200 individual members. Among the organizational  
12 members are Sierra Club Sacramento Group; Sacramento Audubon; Friends of Stone Lakes National  
13 Wildlife Refuge; Sacramento Valley Chapter of California Native Plant Society; Save the American  
14 River Association; Save Our Sandhill Cranes; Friends of Swainson’s Hawk, and Sacramento Area  
15 Creeks Council. These organizations, some of which are also parties to this petition, work to protect  
16 natural habitat and at-risk species. ECOS members, as well as its organizational members, reside in  
17 areas that would be adversely affected by the Project for wildlife observation, recreation and aesthetic  
18 enjoyment and are ratepayers who will pay for construction of the Project if it is approved.

19 18. Petitioner and Plaintiff SACRAMENTO AUDUBON SOCIETY (“Sacramento  
20 Audubon”) is a 501(c)(3) non-profit organization that formed over 70 years ago to promote the  
21 protection, conservation, and scientific study of wild birds, foster the enjoyment and appreciation of  
22 wild birds through community outreach, encourage, support, and provide environmental educational  
23 opportunities, and advocate for the conservation of open space in the Sacramento region. Sacramento  
24 Audubon’s members use and enjoy the Delta and surrounding areas for wildlife observation,  
25 recreation, and other conservation purposes. The Project, combined with urban development and shifts  
26 from annual row crops to permanent crops would dramatically diminish what little remains of the  
27 winter and migratory habitat for waterfowl, shorebirds and sandhill cranes in the Delta, and threatens  
28 to increase the salinity of the water farmers in the Delta currently use for irrigation. Further, the

1 negative impacts to native fish are likely to be dramatic which will result in declining populations of  
2 wintering, migratory, and breeding fish-eating birds. The Project will also facilitate the purchase of  
3 water from rice growers in the Sacramento Valley, which would contribute to the decline of more than  
4 150 species of birds.

5 19. Respondent and Defendant CALIFORNIA DEPARTMENT OF WATER RESOURCES  
6 (“DWR”), is a Department of the State of California subject to all California law. DWR is the State  
7 lead agency for the approval of the Project under CEQA.

8 20. Petitioners are currently unaware of the true names and capacities of Does 1 through 20,  
9 inclusive, and therefore sue those parties by such fictitious names. Does 1 through 20, inclusive, are  
10 agents of the state or federal government who are responsible in some manner for the conduct  
11 described in this petition, or other persons or entities presently unknown to Petitioners who claim  
12 some legal or equitable interest in the Project that is the subject of this action. Petitioners will amend  
13 this petition to show the true names and capacities of Does 1 through 20 when such names and  
14 capacities become known.

15 21. Petitioners are currently unaware of the true names and capacities of Real Parties in  
16 Interest, Does 21 through 50, inclusive. Does 21 through 50, inclusive, are persons or entities presently  
17 unknown to Petitioners who claim some legal or equitable interest in the Project that is the subject of  
18 this action. Petitioners will amend this petition to show the true names and capacities of Does 21  
19 through 50 when such names and capacities become known.

#### 20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 22. Petitioners have exhausted all administrative remedies by submitting written comments  
22 during several stages of the Project approval and EIR processes, including but not limited to written  
23 comments objecting to approval of the project and highlighting CEQA (Pub. Resources Code sections  
24 21000, et seq.) and Delta Reform Act (Water Code sections 85000 et seq.) violations and deficiencies  
25 in the Draft and Final EIR. All issues raised in this petition were raised by Petitioners, other members  
26 of the public, and/or public agencies prior to approval of the Project and certification of the EIR.

27 23. Petitioners presented written comments during the administrative process and hearings  
28 on the matters being challenged in this petition.



1 sustainable,” and responded by passing the Delta Reform Act, codified in the California Water Code at  
2 sections 85000 *et seq.*

3 32. Policies established by the Delta Reform Act include “the policy of the State of  
4 California is to reduce reliance on the Delta in meeting California’s future water supply needs through  
5 a statewide strategy of investing in improved regional supplies, conservation, and water use  
6 efficiency... .” (Water Code § 85021.)

7 33. DWR is the lead agency responsible for complying with CEQA including preparation of  
8 the EIR for the Project.

9 34. DWR issued the Notice of Preparation (NOP) of Draft EIR for the Delta Conveyance  
10 Project on January 15, 2020. The first two of 24 probable significant effects of the project listed by the  
11 NOP were “Water Supply: changes in water deliveries” and “Surface Water: changes in river flows in  
12 the Delta.” (NOP p. 9.)

13 35. DWR made the Draft EIR on the Delta Conveyance Project available for public review  
14 on July 27, 2022.

15 36. The public review and comment period for the Draft EIR closed on December 16, 2022.

16 37. According to the Final EIR, the Project is Alternative 5. (**Final EIR**, Executive  
17 Summary, p. ES-12.) The Project would increase deliveries, meaning diversions, by 543,000 acre-feet  
18 per year on average and 316,000 acre-feet per year in dry and critical water years. (**Final EIR** and  
19 Draft EIR, Executive Summary, p. ES-51, table ES-4. All references to the Final EIR are to Volume 1  
20 unless expressly cited to Volume 2.) The Final EIR admits, “there are consistent decreases among  
21 project alternatives in long-term average flows for all months on the Sacramento River north of  
22 Courtland (i.e., downstream of the proposed north Delta intakes) due to the diversions of available  
23 excess water at the proposed north Delta intakes ....” (**Final EIR** and Draft EIR, Ch. 5, pp. 5-2, 5-27.)

24 38. On September 28, 2023, the State Water Resources Control Board (Water Board) issued  
25 its Draft *Staff Report/Substitute Environmental Document in Support of Potential Updates to the*  
26 *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the*  
27 *Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta.* (“*Water Board Staff*  
28 *Report/SED.*”) The *Water Board Staff Report/SED* is part of the Project Administrative Record as it

1 was furnished to DWR by the Water Board and also with Petitioners October 30, 2023 Supplemental  
2 Comment Letter on the Delta Conveyance Project Draft EIR. According to the *Water Board Staff*  
3 *Report/SED*, the Delta Conveyance Project would reduce Delta outflows by 758,000 acre-feet in wet  
4 years, 1,061,000 acre-feet in above normal years, 649,000 acre-feet in below normal years, 326,000  
5 acre-feet in dry years, and 156,000 acre-feet in critical years. (*Water Board Staff Report/SED*, Ch.  
6 7.24, Table 7.24-1, p. 7.24-7.)

7 39. The Project will include two intakes with a combined conveyance capacity of 6,000  
8 cubic feet per second (“cfs”). (**Final EIR**, Executive Summary, Table ES-1, p. ES-16, Draft EIR, Ch.  
9 6, pp. 6-48, 49.) That capacity is almost one third of the total average total Sacramento River flow of  
10 21,464 cfs north of Courtland, the location of the proposed intakes. (**Final EIR** and Draft EIR, Ch. 5,  
11 Surface Water, Table 5, p. 5-3.) That capacity is almost half of the dry/critical Sacramento River flow  
12 of 12,484 cfs at that location. (*Id.*) The Tunnel conveying this diverted flow would be 45 miles long,  
13 with an inside diameter of 36 feet. (**Final EIR**, Ch. 3, p. 3-15, Table 3-2, Draft EIR, Ch. 3, p. 3-16,  
14 Table 3-2.)

15 40. The Water Board’s September 25, 2019, comment letter to the United States Bureau of  
16 Reclamation on the Draft EIS on reinitiation of consultation on the coordinated long-term operation of  
17 the State Water Project (SWP) and Central Valley Project (CVP) is part of the Project Administrative  
18 Record as it was furnished to DWR with Petitioners’ December 15, 2022, Comment Letter on the  
19 Delta Conveyance Project Draft EIR. The Water Board explained in its Comment Letter that  
20 increasing exports from the Delta is expected to have a negative impact on the survival and abundance  
21 of native fish species including threatened and endangered species. (Water Board Comment Letter, p.  
22 3, September 25, 2019.) The Water Board also explained increased freshwater flows through the Delta  
23 are needed to protect Bay-Delta ecosystem processes, and native and migratory fish. (*Id.*) Moreover,  
24 the Water Board said it is not clear how the Project would not further degrade conditions for fish and  
25 wildlife species that are already in poor condition, some of which are on the verge of functional  
26 extinction or extirpation. (*Id.*)

27 41. The Water Board issued its written comments on DWR’s NOP on April 15, 2020. The  
28 Water Board explained that the construction and operation of the SWP and the CVP have been

1 accompanied by significant declines in nearly all species of native fish. (Water Board NOP Comment  
2 Letter, p. 6.) The Water Board also explained the Project could adversely affect aquatic resources by  
3 modifying the timing, volume and duration of freshwater flows and adding new water diversion  
4 facilities closer to the major migratory routes of vulnerable fish populations such as Sacramento River  
5 Chinook salmon, and have other adverse impacts. (*Id.*) The Water Board also explained portions of the  
6 Delta are on the Clean Water Act Section 303 (d) list of impaired waters for not meeting water quality  
7 standards for several pollutants. (*Id.*, p. 8.) The Final EIR admitted that any of the Project alternatives  
8 together with other reasonably foreseeable projects could have cumulatively significant water quality  
9 effects on several constituents including Cyanobacteria Harmful Algal Blooms, Boron, Bromide,  
10 Chloride, Electrical Conductivity, Mercury, Organic Carbon, Pesticides, and Selenium. (**Final EIR**,  
11 Ch. 9, Water Quality, p. 9-201, Draft EIR, Ch. 9, p. 9-108.) The Final EIR admits that higher water  
12 temperatures, lower flows, longer residence times and other factors provide favorable conditions for  
13 CHABs [Cyanobacteria Harmful Algae Bloom] including Microcystis bloom formation. (**Final EIR**  
14 and Draft EIR, Appendix 9E, p. 9E-3.) One of the causes of those factors is reducing flows by  
15 diversions for exports. The Final EIR admits that the frequency and intensity of CHABs will increase  
16 with the increased frequency and intensity of droughts with climate change. (**Final EIR**, Ch. 26,  
17 Public Health, pp. 26-9,-10, **Draft EIR**, Ch. 26, p. 26-9.) The EIR admits there are public health  
18 effects following human exposure to CHABs in drinking water or from recreational activities. (*Id.*)  
19 The EIR admits reduced Delta outflow may increase the potential for negative effects from flow -  
20 related stressors such as Microcystis. (**Final EIR**, Ch. 26, p. 26-57, Draft EIR, Ch. 26, p. 26-59.)

21 42. Expert State agencies submitted comments on the Draft EIR explaining adverse impacts  
22 the Project would have on endangered and threatened fish species. The Water Board explained to  
23 DWR that the Draft EIR did not provide evidence as to how proposed habitat restoration would reduce  
24 significant operational impacts on Delta smelt and longfin smelt to less than significant levels. (Water  
25 Board Comment Letter, p. 13, December 16, 2022.) The Delta Independent Science Board (“DISB”)  
26 explained the effects of flow variability on aquatic habitat or persistence of species of concern under  
27 existing or future climate were not addressed. (DISB Comment Letter, p. 25, December 16, 2022.) The  
28 California Department of Fish and Wildlife (“CDFW”) explained that aquatic species in the Delta

1 listed under the federal and state Endangered Species Acts are at record low abundance following  
2 years of sharp population declines as prolonged drought exacerbates conditions in the Delta, and that  
3 Chinook salmon have a high risk of extinction. (CDFW Comment Letter, pp. 16-17, December 16,  
4 2022.) CDFW also explained that under conditions in 2040, Project operations are likely to affect the  
5 ability of fish species to recover from conditions caused by drought conditions which may lead to a  
6 destabilizing effect on fish populations. (*Id.*) CDFW also explained it did not see sufficient  
7 substantiation for the Draft EIR determination that Project impacts on several listed fish species will  
8 be reduced to less than significant levels, even after mitigation. (*Id.* p. 23.)

9 43. Expert State agencies also commented on the inadequacy of the Draft EIR in addressing  
10 water quality impacts. The Water Board explained there were deficiencies with respect to water  
11 quality, such as that without assessing the potential for increasing harmful algal blooms across the  
12 entire Delta, it is difficult to determine impacts of the proposed Project operations. (Water Board  
13 Comment Letter, p. 10, December 16, 2022.) The DISB pointed out that algal bloom issues were only  
14 assessed for drinking water quality impacts, rather than being recognized for potentially broad effects  
15 on ecosystems, wild and domestic animals, human health, and recreational activities. (DISB Comment  
16 Letter, p. 23.) The DISB also explained that harmful algal blooms are becoming increasingly common  
17 in the Delta and that warmer temperatures, reduced flow, high residence time, and more concentrated  
18 nutrients are likely to exacerbate the problem. (DISB Comment Letter, p. 25.)

19 44. Significant new information from expert Federal and State agencies about inadequacies  
20 in the Draft EIR and adverse impacts of the Project has appeared since DWR issued the Draft EIR on  
21 July 27, 2022. All such information referenced here has been provided by Petitioners to DWR with  
22 Petitioners' supplemental comments on the Draft EIR prior to issuance of the Final EIR. The U.S.  
23 Environmental Protection Agency ("EPA") issued its March 16, 2023, comment letter on the U.S.  
24 Army Corps of Engineers Draft EIS on the Delta Conveyance Project. The EPA explained that the  
25 operation of the project has potential to increase the extent of ecological impacts already impacting the  
26 Delta and Sacramento River including salinity, temperature, nutrients, and chemical contaminants.  
27 (EPA Comment Letter, detailed comments, p. 5, March 16, 2023.) The EPA explained that given the  
28 status of many Delta fish species as threatened, endangered, or otherwise impaired, further diversion

1 of Sacramento River water for the Project could very well lead to greater impairment or extinction.

2 (*Id.*) The EPA also explained:

3 The operational scenario evaluated in the Draft EIR (referenced to in the EIS) does not  
4 take into account significant recent and upcoming activities that affect the amount of  
5 available water for the Project. In particular, the Draft EIR's evaluation of operation  
6 impacts does not consider the impacts of future storage projects that would require  
7 Sacramento River water or recent and upcoming updates to the Bay Delta Water Quality  
8 Control Plan (WQCP). Overestimation of available water will lead to underestimating  
9 ecological impacts or water available for water users.

7 (*Id.*, p. 6.) The EPA also said, “we are concerned that the proposed project would make future  
8 compliance with water quality standards more difficult, thereby increasing the chances of exceeding  
9 water quality standards and failing to protect multiple beneficial uses.” (*Id.*) The CDFW Memorandum  
10 of December 29, 2022, reporting the 2022 Fall Midwater Trawl annual fish abundance and distribution  
11 summary, was also provided by Petitioners to DWR with Petitioners' supplemental comments on the  
12 Draft EIR. Delta Smelt had been declared threatened in 1993 and their critical habitat had been  
13 designated in 1994. The CDFW Memorandum said:

14 The 2022 abundance index was zero and continues the trend of no catch in the FMWT  
15 (Fall Midwater Trawl Survey) since 2017. (Fig. 2). No Delta Smelt were collected from  
16 any stations during our survey months of September-December. An absence of Delta  
17 Smelt catch in the FMWT is consistent among other surveys in the estuary. The  
18 Enhanced Delta Smelt Monitoring (EDSM) survey of the U.S. Fish and Wildlife Service  
19 (USFWS) caught 3 Delta Smelt among 61 sampling days (between 9/6 and 12/15)  
20 comprised of 1,997 tows (U.S. Fish and Wildlife Service 2022)... While FMWT did not  
21 catch any Delta Smelt, it does not mean there were no smelt present, but the numbers are  
22 very low and below the effective detection threshold by most sampling methods.

19 (CDFW Memorandum, p. 2.) The U.S. Fish and Wildlife Service published its proposed listing of the  
20 Bay-Delta longfin smelt distinct population segment as an endangered species at 87 Fed.Reg. 60957-  
21 60975 on October 7, 2022. The Service's Federal Register Notice explained that reduced and altered  
22 freshwater flows resulting from human activities such as exports for the State and Federal water  
23 projects and the impacts resulting from climate change conditions are “the main threat facing the Bay-  
24 Delta longfin smelt due to the importance of freshwater flows to maintaining the life-history functions  
25 and species needs of the DPS [distinct population segment].” (87 Fed.Reg. 60963.) The EPA's March  
26 16, 2023 comment letter and CDFW's December 29, 2022 Memorandum, and the Service's Federal  
27 Register Notice were provided to DWR with Petitioners' June 29, 2023 supplemental comment letter  
28 on DWR's Draft EIR.



1 45. The September 28, 2023, *Water Board Staff Report/SED* explained that native species in  
2 the Bay-Delta ecosystem are experiencing an ecological crisis. (*Water Board Staff Report/SED*, Ch.  
3 7.12, p. 7.12.1-1.) The *Water Board Staff Report/SED* explained that increases in Delta inflows and  
4 outflows were necessary to address the crisis. Moreover,

5 The Delta is experiencing an ecological crisis in the watershed and the prolonged and  
6 precipitous decline in numerous native species of spring-run and winter-run Chinook  
7 salmon, longfin smelt, Delta smelt, Sacramento splittail, and other species, and the  
8 factors involved in those declines...

9 Failing to take actions proposed by the proposed Plan amendments could result in the loss  
10 of Delta function beyond restoration of its original function and, therefore, would result  
11 in a significant irreversible environmental change.

12 (*Water Board Staff Report/SED* Ch. 7.23, p. 7.23-69.) The *Water Board Staff Report/SED* also  
13 explained that:

14 Delta communities have expressed significant ongoing concerns regarding proliferation  
15 of HABs [harmful algal blooms] in the Delta and requested that the Water Boards take  
16 actions to address these concerns. HABs are a component of the phytoplankton  
17 community with potentially severe impacts on fish and wildlife, as well as on human and  
18 pet health and safety. HABs have been increasing in recent years, especially in the Bay-  
19 Delta, although different species and toxins tend to occur in the more saline San  
20 Francisco Bay than in the fresher Delta (Kudela et al. 2023). HAB occurrence is related  
21 to flow such that HABs benefit from lower inflows, high residence times, and higher  
22 stratification (Kudela et al. 2023), as well as temperature, and nutrients.” (Ch. 5,  
23 Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, p. 5-60)(Emphasis  
24 added.) ‘Cyanobacterial blooms can release toxins (cyanotoxins) that are hazardous to  
25 humans and are therefore a concern for recreational waters and municipal and domestic  
26 water supplies (specifically drinking water).’

27 (Ch. 7.22, New or Modified Facilities, p. 7.22-85.) The *Water Board Staff Report/SED* proposes to  
28 substantially reduce exports in order to increase Delta outflows. The objective is to maintain Delta  
outflows sufficient to support and maintain the natural production of viable native, and anadromous  
fish, estuarine fish, and aquatic species populations rearing in or migrating through the Bay-Delta  
estuary. (*Water Board Staff Report/SED* Ch. 5, p. 5-28.)

Under the proposed flow objectives of 55% unimpaired flow, exports from the  
Sacramento/Delta supply to the San Joaquin Valley region will be reduced by 383 TAF  
(thousand acre-feet per year) in critical years, 707 TAF in dry years, 510 TAF in below  
normal years, 277 TAF in above normal years, and 96 TAF in wet years. (*Water Board  
Staff Report/SED*, Ch. 6, Table 6.4-20, p. 6-74.) Exports from the Sacramento/Delta  
supply to the Southern California region would be reduced 177 TAF in critical years, 673  
TAF in dry years, 655 TAF in below normal years, 541 TAF in above normal years, and  
265 TAF in wet years.

(*Id.*, Table 6.4-24, p. 6-79.)

1           46.     Despite these comments and other evidence indicating that the Project would have large  
2 and profound adverse effects on surface water resources, DWR’s Final EIR did not consider changes  
3 to surface water resources as an impact of the Project alternatives under CEQA and did not evaluate  
4 the impacts of Project operations on surface water resources under CEQA. (**Final EIR**, Executive  
5 Summary, Ch. 5, p. 5-2, Draft EIR, Executive Summary, p. ES-48; Ch. 5, pp. 5-1,-2.)

6           47.     The Final EIR stated that several EIR chapters (Chapter 5, *Surface Water*, Chapter 6,  
7 *Water Supply*, Chapter 30, *Climate Change*, and Chapter 31, *Growth inducement*) “have a slightly  
8 different chapter structure or approach to impact analysis,” and “may describe potential changes to a  
9 resource where change to that resource alone is not considered an environmental impact under CEQA.  
10 Additionally, these resource chapters do not determine the level of significance of change.” (**Final**  
11 **EIR**, Ch. 4, p. 4-3.) Accordingly, the EIR did not determine the level of significance of change to the  
12 surface water resource. (*Id.*)

13           48.     According to the *Water Board Staff Report/SED*,

14           A review of the water right records in the Sacramento/Delta watershed included in the  
15 demand dataset shows that the total volume of water authorized for diversion in the  
16 Sacramento/Delta watershed exceeds the annual average unimpaired outflow from the  
17 Bay-Delta watershed. The total average unimpaired outflow from the Bay-Delta  
18 watershed is about 28.5 MAF [million acre-feet]/yr. The face value, or total volume of  
19 water authorized for diversion, of the active consumptive post-1914 appropriative water  
20 right records in the Sacramento/Delta watershed is approximately 159 MAF/yr (Table 2.  
21 7-1a), which is over five times the total annual average unimpaired outflow for the entire  
22 Bay-Delta watershed. This total face value amount excludes statements of diversion and  
23 use (including riparian and pre-1914 appropriative claims), which are not assigned a face  
24 value amount, but account for many of the water right records in the Sacramento/Delta  
25 watershed.  
26 (*Water Board Staff Report/SED*, Ch. 2, p. 2-117.)

27           49.     Despite the impacts of water diversions on water supply and the over-appropriation of  
28 over five times the annual average unimpaired outflow for the entire Bay-Delta watershed, DWR’s  
Draft EIR did not consider changes to water supply as an impact under CEQA and did not evaluate the  
changes to water supply under CEQA. (**Final EIR** and Draft EIR, Ch. 6, pp. 6-1,-2,-34.) DWR’s EIR  
did not determine the level of significance of change to water supply. (**Final EIR**, Ch. 4, p. 4-3.)

          50.     The Delta Reform Act includes specific provisions applicable to the Project, including  
Water Code sections 85320, 85321, and 85322. Water Code section 85320 mandates that the Bay  
Delta Conservation Plan (“BDCP”), an earlier name for the Project, could not be incorporated into the

1 Delta Plan and could not be eligible for state funding unless, among other things, the BDCP complies  
2 with CEQA and includes “a comprehensive review and analysis of” (among the listed subjects):

3 A reasonable range of Delta conveyance alternatives, including through-Delta, dual  
4 conveyance, and isolated conveyance alternatives and including further capacity and  
design options of a lined canal, an unlined canal, and pipelines.

5 (Water Code § 85320(b)(2)(B).) Pursuant to the Delta Reform Act, the established State policy is “to  
6 reduce reliance on the Delta in meeting California’s future water supply needs through a statewide  
7 strategy of investing in improved water supplies, conservation, and water use efficiency.” (Water Code  
8 § 85021) (Emphasis added.). Another policy established by the Act is to “Restore the Delta ecosystem,  
9 including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.” (Water  
10 Code § 85020(c.) The Delta Reform Act also mandates that “The longstanding constitutional principle  
11 of reasonable use and the public trust doctrine shall be the foundation of state water management  
12 policy and are particularly important and applicable to the Delta.” (Water Code § 85023.)

13 51. The first objective stated by DWR for the project is “To help address anticipated rising  
14 sea levels and other reasonably foreseeable consequences of climate change and extreme weather  
15 events.” (Final EIR and Draft EIR, Ch.2. p. 2-2) California’s Climate Change and Climate Adaptation  
16 legislation (Stats. 2015, ch. 603) added Public Resources Code section 71154(c)(2), which states:

17 When developing infrastructure to address adaptation [to climate change], where feasible,  
18 a project alternative should be developed that utilizes existing natural features and  
ecosystem processes or the restoration of natural features and ecosystem processes to  
19 meet the project’s goals.

20 52. CEQA establishes the policy of the state to, “Prevent the elimination of fish or wildlife  
21 species due to man's activities, insure that fish and wildlife populations do not drop below self-  
22 perpetuating levels, and preserve for future generations representations of all plant and animal  
23 communities and examples of the major periods of California history.” (Pub. Res. Code § 21001(c).)  
24 Similarly, Fish and Game Code section 2053 expresses state policy with regard to developing  
25 alternatives and conservation of endangered and threatened species:

26 (a) The Legislature further finds and declares that it is the policy of the state  
27 that public agencies should not approve projects as proposed which would jeopardize the  
28 continued existence of any endangered species or threatened species or result in the  
destruction or adverse modification of habitat essential to the continued existence of  
those species, if there are reasonable and prudent alternatives available consistent with  
conserving the species or its habitat which would prevent jeopardy.

1 (b) Furthermore, it is the policy of this state and the intent of the Legislature that  
2 reasonable and prudent alternatives shall be developed by the department, together with  
3 the project proponent and the state lead agency, consistent with conserving the species,  
4 while at the same time maintaining the project purpose to the greatest extent possible.  
5 (Emphasis added.)

6 53. The nine “alternatives” considered in the EIR are all new Delta water conveyance  
7 facilities, being tunnels ranging in capacity from 3,000 cfs to 7,500 cfs. (**Final EIR** and Draft EIR,  
8 Executive Summary, pp. ES-13,-14, CEQA Findings, p. 7-3, 14-29.) The EIR included no alternatives  
9 under the Delta Reform Act, Climate Change and Climate Adaptation legislation, California  
10 Endangered Species Act, or Fish and Game Code section 2053 focused on reducing exports and  
11 increasing freshwater flows that would begin to save and restore the Delta, utilize existing natural  
12 features, and not jeopardize the continued existence of endangered and threatened fish species or result  
13 in adverse modification of the habitat essential to the continued existence of those species. Related  
14 regulatory and conservation policies were not central to the Draft EIR’s analysis of feasible  
15 alternatives.

16 54. In 2011, the National Academy of Sciences declared in reviewing the BDCP, the then-  
17 current version of the Delta Conveyance Project, later known as California WaterFix, that: “[c]hoosing  
18 the alternative project before evaluating alternative ways to reach a preferred outcome would be post  
19 hoc rationalization—in other words, putting the cart before the horse. Scientific reasons for not  
20 considering alternative actions are not presented in the plan.” (National Academy of Sciences, Report  
21 in Brief at p. 2, May 5, 2011). From 2012 through November 2023, Petitioners have regularly  
22 requested and demanded orally and in writing that DWR include a proper range of reasonable  
23 alternatives to the Project in compliance with CEQA, the Delta Reform Act, the Climate Change and  
24 Climate Adaptation legislation, and the California Endangered Species Act, including through-Delta  
25 alternatives that would increase freshwater flows through the Delta by reducing exports. Petitioners  
26 have also regularly presented to DWR during that time a written alternative, a carefully conceived  
27 modern plan calling for reducing reliance on the Delta by such measures as “improved regional  
28 supplies, conservation, and water use efficiency” as well as “water recycling” and “advanced water  
technologies.” The most recent version of that alternative is *Crafting a Sustainable Water Plan for  
California* which Petitioners submitted to DWR with their December 15, 2022, comment letter on the  
Draft EIR. Also, *Sierra Club California’s Smart Water Alternatives: To The Bay Delta Conveyance*

1 *Project* was submitted to DWR with the December 16, 2022, comment letter on the Draft EIR from  
2 Sierra Club California, the Environmental Justice Coalition for Water, California Indian  
3 Environmental Alliance (CIEA), Southern California Watershed Alliance, Desal Response Group,  
4 Social Eco Education, and SoCal 350 Climate Action.

5 55. Expert state agencies also called for the development of additional alternatives in their  
6 comments on DWR’s Draft EIR. The Delta Independent Science Board called for an additional  
7 alternative, a no-tunnel alternative. The DISB said “A thorough analysis would also include impacts  
8 due to changes in inflows to the San Francisco Bay estuary and any gains in environmental resiliency  
9 for moving water through existing channels, rather than diverting it into a tunnel.” (DISB Comment  
10 Letter, p. 23, December 16, 2022.) The Water Board called for a reasonable range of alternatives  
11 including evaluation of a scenario consistent with the Water Board’s efforts to update and implement  
12 the Bay-Delta Plan to improve protections for native fish species. (Water Board Comment Letter, p. 4,  
13 December 16, 2022.) CDFW called for additional CEQA alternatives that depict and evaluate different  
14 operational scenarios. (CDFW Comment Letter, p. 6, December 16, 2022.)

15 56. The Water Board explained in the *Water Board Staff Report/SED* that recycling,  
16 conservation, and desalination are alternatives to exporting water. (*Water Board Staff Report/SED*, Ch.  
17 5, p. 5-67; Ch. 6, pp. 92-96, Ch. 7, pp. 7.12, 102-103.)

18 57. On July 25, 2016, the Ninth Circuit Court of Appeals issued its decision in *Pacific Coast*  
19 *Federation of Fishermen’s Assn’s v. U.S. Dept. of the Interior*. (     Fed.Appx.     , 2016 WL 3974183  
20 (9th Cir., No. 14-15514, July 25, 2016)(not certified for publication.) The court held that the  
21 challenged environmental document issued by Reclamation under NEPA on renewal of interim two-  
22 year water contracts “did not give full and meaningful consideration to the alternative of a reduction in  
23 maximum water quantities.” (*Id.* at p. \*3.)

24 58. DWR issued the Final EIR on December 8, 2023. DWR’s responses in the Final EIR to  
25 comments on the Draft EIR admitted that “The underlying purpose and basic objectives of the project,  
26 as described in Chapter 2, Purpose and Project Objectives, are neither to restore the Delta nor to  
27 develop new sources of water or a new water supply. (**Final EIR**, Vol. 2, Section 3, Responses to  
28 Comments, p. 1-13.)

1           59.     Petitioners requested and demanded in their December 15, 2022 comment letter on the  
2 Draft EIR that DWR prepare a revised Draft EIR for public review and comment. Preparation of a  
3 revised Draft EIR and recirculation for public review and comment were required by law including  
4 CEQA Guidelines section 15088.5(a)(4), because the Draft EIR/EIS was so fundamentally and  
5 basically inadequate and conclusory in nature that meaningful public review and comment were  
6 precluded, and by section 15088.5(a)(3) because a feasible project alternative considerably different  
7 from others previously analyzed would clearly lessen the significant environmental impacts of the  
8 project.

9           60.     Petitioners requested and demanded during the CEQA review process that DWR prepare  
10 and issue a revised Draft EIR for public review and comment pursuant to Public Resources Code  
11 section 21092.1 and CEQA Guidelines sections 15088.5(a)(1) and (2) because of significant new  
12 information showing that the Project would have new and/or substantially more severe environmental  
13 impacts, including information provided by Petitioners in their supplemental comment letters of June  
14 29, October 30, and November 21, 2023.

15           61.     On December 21, 2023, DWR certified the Delta Conveyance Project Final EIR, despite  
16 the numerous legal deficiencies in the Draft and Final EIR and demands to prepare and recirculate a  
17 revised Draft EIR. On December 21, 2023, DWR approved the Delta Conveyance Project, released its  
18 Final Statement of Reasons and CEQA Findings of Fact, and filed the Notice of Determination  
19 pertaining to certification of the EIR, thereby violating CEQA, the Delta Reform Act, Climate Change  
20 and Climate Adaptation legislation, CESA. DWR has abused its discretion and failed to proceed in the  
21 manner required by law. As a result of DWR's approval of the Project and certification of the EIR,  
22 Petitioners and their members will suffer great and irreparable harm to their interests, including  
23 conservation, wildlife viewing, recreation, boating, kayaking, fishing, and other activities as described  
24 herein. Petitioners have no adequate remedy at law for this irreparable harm.

25           62.     As approved, the Project would include two new north Delta intake structures, together  
26 capable of diverting 6,000 cfs of water from the Sacramento River in the north Delta into the Tunnel  
27 which would transport the water to existing pumping plants in the south Delta. The Tunnels would  
28 have the capacity to transport 6,000 cubic feet per second of water. The Project also includes related

1 infrastructure associated with construction and operation of the intakes and Tunnel, including  
2 construction of new above-ground power transmission lines.

3 63. The Project would be operated in conjunction with, and as part of, the State Water  
4 Project (“SWP”) the system of dams, diversions, reservoirs, pumps, canals, and other infrastructure  
5 that exports water from water-rich portions of northern California to the drier southern parts of the  
6 state. DWR also administers the SWP.

7 64. The Project, however, is not merely a modification of the SWP. It will consist of wholly  
8 new facilities, operated in a fundamentally different manner than the existing SWP, and exceeds the  
9 scope of any facilities authorized by statute. On January 17, 2024, the Superior Court for the County  
10 of Sacramento ruled that DWR’s “Delta Program,” which DWR vaguely formulated as synonymous  
11 with the Project, is not a modification of the Feather River Project (the original component of what  
12 became the State Water Project), and thus that DWR lacked statutory authority to issue bonds for the  
13 Delta Program.

14 65. The Project will harm pelagic and anadromous fisheries in the Bay-Delta and its  
15 watershed and other natural resources held in trust by the State of California on behalf of its people by  
16 encouraging and catalyzing the construction of new water delivery conveyance and upstream water  
17 storage, by prioritizing water deliveries over ecosystem restoration, and by failing to consider the  
18 timing and quantity of flows to ensure ecosystem health. Harm to the pelagic and anadromous fishery  
19 in the Bay-Delta and its watershed harms Petitioners and their members by threatening impairment of  
20 their use and enjoyment of these species and their habitat.

21 66. The Project will also harm ratepayers of those water contractors who pay for the Project  
22 by unnecessarily raising their water rates to promote a project that yields less water supply than less  
23 expensive local alternatives. This is contradictory to the Human Right to Water, which recognizes  
24 water affordability as a barrier to access to water. These ratepayers include many members of  
25 Petitioners’ organizations, who have limited resources to develop a sustainable water supply that can  
26 withstand climate change.

27 67. DWR’s failure to proceed in the manner required by CEQA, the Delta Reform Act, and  
28 the fully protected species statutes prior to approving the Project and the resulting certification of the

1 EIR, will result in a new, upstream conveyance that has the capacity to further reduce the already  
2 significantly depleted freshwater flows in the Sacramento River, its tributaries, sloughs, and the Delta  
3 and the Bay. Petitioners and their members have never had the opportunity to review and comment on  
4 an adequate Draft EIR. Petitioners and their members will suffer great and irreparable injury caused by  
5 the reduced flows that will result from implementation of the Delta Conveyance Project which in turn  
6 will harm fisheries habitat and recreational opportunities in areas in and upstream of the Delta.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of CEQA, Pub. Resources Code § 21000, et seq.)**

9 68. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully set  
10 forth herein.

11 69. CEQA requires that “an agency must use its best efforts to find out and disclose all that  
12 it reasonably can” about a project being considered and its environmental impacts.” (*Vineyard Area*  
13 *Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428.) CEQA applies to most public agency  
14 decisions to carry out, authorize, or approve projects that could have adverse effects on the  
15 environment. (Pub. Resources Code §§ 21000; 21001, subd. (g).) CEQA requires that public agencies  
16 refrain from approving projects with significant environmental effects if “there are feasible  
17 alternatives or mitigation measures” that can substantially lessen or avoid those effects. (Pub.  
18 Resources Code § 21002.) Under CEQA, a “project” includes the whole of an action that may result in  
19 either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA  
20 Guidelines § 15378(a).) CEQA requires agencies to inform themselves about the environmental effects  
21 of their proposed actions, consider all relevant information before taking action, give the public an  
22 opportunity to comment, and avoid or reduce significant environmental impacts when it is feasible to  
23 do so. (Pub. Resources Code § 21000.) CEQA’s Additional Legislative Intent section, Public  
24 Resources Code section 21001, declares in pertinent part, “it is the policy of the state to: (a) Develop  
25 and maintain a high-quality environment now and in the future, *and take all action necessary* to  
26 protect, *rehabilitate, and enhance* the environmental quality of the state” and to “(c) *Prevent the*  
27 *elimination of fish or wildlife species due to man’s activities, insure that fish and wildlife populations*  
28 *do not drop below self-perpetuating levels, and preserve for future generations representations of all*



1 plant and animal communities and examples of the major periods of California history.” (Emphasis  
2 added.)

3 70. CEQA requires that the lead agency’s factual conclusions must be supported by  
4 substantial evidence in the light of the whole record. (Pub. Resources Code §§ 21168, 21168.5; CEQA  
5 Guidelines § 15384(b).) “Substantial evidence” is defined as relevant, reasonable information and  
6 inferences that a fair argument can be made to support a conclusion, including facts, reasonable  
7 assumptions predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines §  
8 15384(a).) Argument, speculation, unsubstantiated opinion, inaccurate or erroneous evidence does not  
9 constitute substantial evidence. (*Id.*)

10 71. The EIR certified by DWR is replete with omitted facts and inaccurate evidence  
11 presented in a manner that is confusing and misleading to the public. The EIR’s alternatives analysis,  
12 Project description, analysis of Project impacts, proposed mitigation measures, and ultimate  
13 assessments are so speculative and lacking in practical analysis that the conclusions rendered directly  
14 violate CEQA.

15 72. DWR prejudicially abused its discretion in approving the Project and certifying the EIR.  
16 DWR did not proceed in the manner required by law and its decisions in approving the Project and  
17 certifying the EIR are not supported by substantial evidence.

18 **Failure to Analyze the Impacts of the Massive Water Project on Surface Water**

19 73. The EIR did not consider Project-related changes to surface water resources resulting  
20 from construction and operation of the Project under CEQA, did not evaluate the changes under  
21 CEQA, and did not evaluate the significance of the changes. That was a failure to proceed in the  
22 manner required by CEQA.

23 **Failure to Analyze the Impacts of the Massive Water Project on Water Supply**

24 74. The Draft and Final EIR did not consider Project-related changes to water supply under  
25 CEQA, did not evaluate the changes as impacts under CEQA, and did not evaluate the significance of  
26 the changes. That was a failure to proceed in the manner required by CEQA.

27 **Failure to Analyze a Reasonable Range of Alternatives**

28 75. An EIR must describe a reasonable range of alternatives to the project, or the location of

1 the project, that could feasibly attain most of the basic objectives of the project while avoiding or  
2 substantially lessening any of the significant effects of the project. (CEQA Guidelines § 15126.6(a)  
3 and (f).) An EIR must contain a “quantitative, comparative analysis” of the relative environmental  
4 impacts of project alternatives. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d  
5 692, 730-737.) “Evaluation of project alternatives and mitigation measures is ‘the core of an EIR.’”  
6 (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918 at p. 937.) State policy  
7 declared by the Legislature in CEQA is that EIRs “omit unnecessary descriptions of projects and  
8 emphasize feasible mitigation measures and feasible alternatives to projects.” (Public Resources Code  
9 § 21003(c).) CEQA requires that public agencies refrain from approving projects with significant  
10 environmental effects if “there are feasible alternatives or mitigation measures” that can substantially  
11 lessen or avoid those effects. (Pub. Resources Code § 21002.)

12 76. Consideration of applicable regulatory regimes and limitations is central to an EIR’s  
13 identification of and analysis of feasible alternatives. (*Banning Ranch Conservancy v. City of Newport*  
14 *Beach* (2017) 2 Cal.5th 918, 936-937; CEQA Guidelines § 15126.6(f)(1).)

15 77. The EIR concedes that the Project would have a number of significant and unavoidable  
16 adverse environmental impacts including conversion of agricultural land (**Final EIR** and Draft EIR,  
17 Executive Summary, Table ES-13, p. ES-81), aesthetics and visual resources (*id.* Table ES-16, p. ES-  
18 87), cultural resources (*id.* Table ES-17, p. ES-89), vehicle miles traveled (*id.* Table ES-18, p. ES-92),  
19 air quality exposure to localized emissions (**Final EIR**, Table ES-21, p. 101, Draft EIR, p. ES-100),  
20 noise and vibrations (**Final EIR**, Table ES-22, p. ES-104, Draft EIR, Table ES-22, p. 103),  
21 paleontological resources (**Final EIR**, Table ES-26, p. ES-112), Draft EIR, Table ES-26, p. ES-111),  
22 and Tribal cultural resources. (**Final EIR**, Table ES-27, p. ES-120, Draft EIR, Table ES-27, p. ES-  
23 119.) Because the EIR identified significant, unavoidable adverse environmental impacts, CEQA  
24 required DWR to adopt a Statement of Overriding Considerations attempting to justify approval of the  
25 Project. The adopted Statement admitted that the Project would have significant environmental effects.  
26 When a project would have significant adverse environmental effects, agencies are “required to  
27 consider project alternatives that might eliminate or reduce the project’s significant adverse  
28 environmental effects.” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108

1 Cal.App.4th 859, 873.)

2 78. Pursuant to CEQA, and state policy including the Delta Reform Act, Climate Change  
3 and Climate Adaptation legislation, CESA, and Fish and Game Code section 2053 provisions set forth  
4 in the General Allegations above, DWR was obligated by law to develop, consider, and analyze a  
5 reasonable range of alternatives including through-Delta alternatives that did not require construction  
6 of a new conveyance system and that would increase freshwater flows through the Delta by reducing  
7 exports, utilize existing natural features, and not jeopardize the continued existence of endangered and  
8 threatened fish species or result in adverse modification of habitat essential to the continued existence  
9 of those species. DWR failed to proceed in the manner required by law because the EIR did not  
10 develop, consider, and analyze such through-Delta alternatives and alternatives, including those that  
11 could increase freshwater flows through the Delta and reduce water exports through recycling,  
12 conservation, and desalination. DWR also failed to proceed in the manner required by CEQA because  
13 it did not develop, consider, and analyze such alternatives in a Draft or revised Draft EIR and circulate  
14 such Draft for decision-maker information and for public review and comment. Instead, the action  
15 alternatives in the Final EIR are simply nine variations on new Delta conveyance facilities ranging in  
16 conveyance capacities from 3,000 cfs to 7,500 cfs. (**Final EIR**, Executive Summary, pp. ES-13, -14.)  
17 Likewise, the action alternatives set forth in the Draft EIR were simply nine new Delta conveyance  
18 facilities ranging in conveyance capacities from 3,000 to 7,500 cfs. (Draft EIR, Executive Summary,  
19 pp. ES-13, -14.) All of the so-called “alternatives” were simply the same diversion project dressed up  
20 in different outfits.

21 79. An obvious, foundational, and feasible alternative to the Project would be to combine  
22 the existing through-Delta conveyance with reduced Delta exports, especially in times of low water  
23 supply and drought. Such an alternative would maintain the environmental benefits provided by  
24 freshwater flows in the Delta while reducing reliance on the Delta for satisfying California’s future  
25 water supply needs. Such an alternative would comply with the policies of the State of California  
26 established by CEQA, the Delta Reform Act, the Climate Change and Climate Adaptation legislation,  
27 and CESA. An example of such an alternative is the Environmental Water Caucus alternative,  
28 *Crafting a Sustainable Water Plan for California* and *Sierra Club California’s Smart Water*

1 *Alternatives: To The Bay Delta Conveyance Project*, both referenced above in the general allegations,  
2 and presented by Petitioners to DWR on December 15 and 16, 2022.

3 80. The EIR’s formulation of Project purposes and objectives improperly constrained and  
4 narrowed consideration of feasible alternatives, including alternatives required by CEQA and by  
5 related regulatory regimes including the Delta Reform Act, the Climate Change and Adaptation  
6 Legislation, and CESA.

7 81. The EIR fails to include feasible alternatives that would meet the requirements of related  
8 regulatory regimes including the Delta Reform Act, the Climate Change and Adaptation legislation,  
9 and CESA.

10 82. DWR’s failure to develop, consider, analyze, and circulate for decision-maker and  
11 public review and comment any such alternatives violates CEQA’s alternatives analysis requirements.  
12 As set forth above, Petitioners and others (including the National Academy of Sciences), have  
13 repeatedly requested that DWR develop, consider, analyze, and circulate for public review and  
14 comment a reasonable range of alternatives including alternatives that would maintain through-Delta  
15 conveyance, not require new conveyance facilities, and begin to increase freshwater flows through the  
16 impaired Delta by reducing exports. The persistent refusal of DWR to develop, consider, analyze, and  
17 circulate for decision-maker and public review and comment any such alternatives violates CEQA’s  
18 alternatives analysis requirements.

19 83. Information scattered in EIR appendices is not a substitute for the good faith reasoned  
20 analysis required by CEQA. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th  
21 918, 941.) The discussion of reasonable alternatives including those called for by the Delta Reform  
22 Act and other related regulatory regimes that were rejected in the Draft EIR was inadequate. That  
23 discussion was also unlawfully relegated to Appendix 3A of the Draft EIR.

24 84. DWR must be ordered to vacate its Project approval and EIR certification and prepare  
25 and circulate for public review and comment a revised Draft EIR including the required range of  
26 reasonable alternatives, including a reasonable range of alternatives maintaining through-Delta  
27 conveyance and increasing freshwater flows through the Delta by reducing exports. CEQA Guidelines  
28 section 15088.5(a)(3) requires recirculation when “A feasible project alternative considerably different

1 from others previously analyzed would clearly lessen the significant environmental effects of the  
2 project, but the project’s proponents decline to adopt it.” Such alternatives must also identify and  
3 discuss the environmental and water supply trade-offs being considered.

#### 4 **Inadequate Analysis of Climate Change**

5 85. Climate change impacts fit squarely within a cumulative impacts analysis. (*Ctr. for*  
6 *Biological Diversity v. Nat. Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.2d 1172, 1217.)  
7 CEQA requires public agencies to ensure their analyses with respect to climate change “stay in step  
8 with the evolving scientific knowledge in state regulatory schemes.” (*Cleveland National Forest*  
9 *Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504; *County of Butte v.*  
10 *Department of Water Resources* (2023) 90 Cal.App.5th 147, 161.) However, the EIR and the Findings  
11 do not adequately address the Project’s foreseeable cumulative impacts on the Bay Delta watershed in  
12 light of future climate change, particularly with regards to water supplies in the context of sea level  
13 rise, changes in storm patterns, and watershed run-off. The EIR fails to adequately address the  
14 Project’s cumulative impacts on the environment of the Bay Delta watershed in a situation that  
15 includes less river inflow and higher evaporation and transpiration rates throughout the watershed. The  
16 EIR fails to adequately disclose or analyze expected changes in hydrologic conditions and water  
17 supply forecasted for the 21st century. The cursory treatment in the EIR does not adequately inform  
18 decision-makers or the public about these expected impacts.

19 86. The first stated objective for the Project is “To help address anticipated rising sea levels  
20 and other reasonably foreseeable consequences of climate change and extreme weather events.” (**Final**  
21 **EIR** and Draft EIR, Ch. 2, p. 2-2.) Despite that, the EIR claimed climate change “is not considered an  
22 environmental impact under CEQA.” (*Id.*, Ch. 4, p. 4-3.) Thus, Chapter 30 on Climate Change, does  
23 “not determine the level of significance of change.” (*Id.*) “[N]o CEQA significance conclusions are  
24 presented for potential impacts [after 2040], and no mitigation measures are recommended to reduce  
25 potential impacts” after 2040. (*Id.*, Ch. 4, pp. 4-5, -6.) DWR’s hydrologic modeling primarily focused  
26 on conditions in 2040. (*Id.*, Ch. 30, Climate Change, pp. 30-2, -24, -25.) DWR’s Draft EIR fails to  
27 include any consideration of climate change impacts when the Project is projected to actually begin  
28 operations and diverting enormous quantities of water in the face of reduced freshwater flows and

1 increasing sea level rise.

2 87. According to the Final EIR:

3 The 2070 scenario used in this appendix is not predictive and should not be construed as  
4 such. It is assumed that changes expected under No Project conditions in 2040, primarily  
5 climate change, would continue and increase in scale and scope by 2070. Climate is a  
6 primary influencing factor on water supplies. Changes in the amount of precipitation  
7 directly affect water supplies. In addition, changes in the seasonality of precipitation and  
8 the amount of precipitation falling as snow versus rain will affect the ability to store  
9 runoff in State Water Project (SWP)/Central Valley Project (CVP) reservoirs, which in  
turn will affect the water supply available to meet many competing needs. Increasing  
temperatures will result in earlier and faster snowmelt. Drier soil profiles in upper  
watersheds will absorb greater amounts of precipitation and reduce runoff. Increasing  
temperatures will increase reservoir evaporative losses. These conditions associated with  
climate change and sea level rise will make operating the SWP and CVP in 2070 more  
difficult.

10 (Final EIR, App. 4A, p. 4A-1.)

11 88. According to the Final EIR, the Project would become operational in 2040. (Final EIR  
12 and Draft EIR, Ch. 30, p. 30-20.) The “alternative diversion point in the north Delta for Delta exports”  
13 would result in “increases in SWP and CVP deliveries during long-term average, dry, and critical  
14 water years (see Chapter 6, *Water Supply*.)” (Final EIR and Draft EIR, Ch. 30, p. 30-26.)  
15 Nonetheless, the EIR fails to disclose and evaluate the potential for the combination of climate change  
16 and Delta Conveyance Project operations, including reduced Delta inflows, reduced Delta outflows,  
17 and increased water exports, to worsen and exacerbate surface water conditions in the already  
18 impaired Delta.

19 89. The EIR acknowledges some of the adverse effects of climate change on water  
20 resources, including decreased snowpack and “lower spring and summer stream flow;” increased  
21 wildfire risk, which “heightens the risk of catastrophic fire impacts to water supply and quality;”  
22 “[d]ecreased water quality in estuaries during droughts;” and “[i]ncreased saltwater intrusion in the  
23 San Francisco Bay Area and the Sacramento-San Joaquin Delta as sea level rises.” (Final EIR and  
24 Draft EIR, Ch. 30, p. 30-11.) “By 2050, extreme Delta drought conditions are projected to occur five  
25 to seven times more frequently (Delta Stewardship Council 2021:5-62).” (Final EIR and Draft EIR,  
26 Ch. 30, pp. 30-18, -19.)

27 90. The EIR’s discussion and analysis of the effect of climate change in the areas of  
28 changing snowpack, increased water temperature, increased evapotranspiration, rim dam water

1 management, flood flows, and upstream fishery habitat is inadequate. DWR’s EIR admitted “Future  
2 surface water conditions are expected to change considerably when compared to existing conditions as  
3 a result of climate change and sea level rise.” (**Final EIR** and Draft EIR, Ch. 5, p. 5-16.) DWR’s EIR  
4 also admitted that climate change “will affect water quality in the Delta in the future and may require  
5 changes in in-Delta water use patterns and upstream reservoir management.” (*Id.*) DWR’s CEQA  
6 Findings made similar admissions including that Delta inflows will be reduced during future dry  
7 periods. (CEQA Findings, pp. 8-4, -5.) DWR’s EIR admitted that “The project alternatives potentially  
8 would have negative impacts on critical fish habitat and special status species.” (**Final EIR** and Draft  
9 EIR, Ch. 30, p. 30-24.) DWR’s EIR focused on climate change sea level rise threats to project  
10 operations being able to divert water at intakes for the project instead of the environmental threats  
11 climate change poses to the Delta region. (**Final EIR** and Draft EIR, Ch. 30, p. 30-23.) The failure of  
12 the EIR to adequately analyze potential climate change effects on Delta hydrology makes it impossible  
13 for the public and the decision-makers to evaluate the alternatives, the mitigations, and the true nature  
14 of the environmental impacts of the Project, all of which are violations of CEQA’s full disclosure  
15 requirements to afford the fullest possible protection of the environment. (Pub. Res. Code § 21001(a).)

16 91. On May 25, 2023, the California State Auditor issued its audit report, *Department of*  
17 *Water Resources Its Forecasts Do Not Adequately Account for Climate Change and Its Reasons for*  
18 *Reservoir Releases Are Unclear.* (“Auditor Report.”) In addition to receiving the Auditor Report at the  
19 time from the State Auditor, the Local Agencies of the North Delta transmitted the Auditor Report to  
20 DWR with their supplemental comment letter of September 8, 2023, and Petitioners transmitted the  
21 Auditor Report to DWR with their supplemental comment letter of November 21, 2023. The Auditor  
22 Report explained that DWR’s water supply forecasts do not adequately account for the effects of  
23 climate change and continues to rely on historical climate data instead of the shifts taking place in  
24 hydrology without incorporating data relevant to climate change including temperature and soil  
25 moisture. The Auditor Report also explained DWR has not developed a long-term plan for the SWP  
26 for responding to the more frequent or more severe future droughts that will take place due to climate  
27 change. According to the Auditor Report, “DWR has not updated its 2010 drought plan “which does  
28 not incorporate the assessment of more severe future droughts as FEMA [Federal Emergency

1 Management Agency] and NDMC [National Drought Mitigation Center] recommend.” (Auditor  
2 Report p. 27.) DWR’s 2010 drought plan “does not identify how the expected, more severe impacts of  
3 drought may specifically strain the State Water Project’s responsibilities to meet water quality and  
4 flow standards for the protection of wildlife. It also does not describe whether DWR may need to take  
5 new actions to address these more severe impacts or the challenges it might face in doing so.” (Auditor  
6 Report p. 28.) Petitioners’ November 21, 2023, supplemental comment letter also furnished 13 recent  
7 technical reports and articles on the worsening climate change crisis. The new information shows “We  
8 are not in an era of global warming; but as UN Secretary General Guterres says, ‘global boiling.’”  
9 (State of the Cryosphere 2023 Report, International Cryosphere Climate Initiative (ICCI Report, p. 2,  
10 November 16, 2023.)

11 92. DWR’s EIR fails to disclose and evaluate the Auditor Report’s determination that  
12 DWR’s water supply forecasts are based on inaccurate and outdated climate change analysis. The EIR  
13 fails to disclose and evaluate the effects that worsening climate change coupled with Project  
14 operations diverting water pose to surface water, water supply, listed fish species, water quality, and  
15 public health, including worsening harmful algal blooms. DWR’s EIR fails to disclose and evaluate  
16 the risk that worsening climate change coupled with updated Water Board requirements to reduce  
17 exports in order to increase freshwater flows through the Delta may result in a constructed, expensive  
18 Delta Conveyance Project that may not be able to operate effectively over the long-term starting in  
19 2040. The climate change information in DWR’s EIR has failed to stay in step with the evolving  
20 scientific knowledge.

21 93. DWR must be ordered to vacate its Project approval and EIR certification, and prepare  
22 and circulate for public review and comment a revised Draft EIR disclosing and evaluating both the  
23 environmental risks to the Delta environment by Project operations coupled with worsening climate  
24 change and the risks the expensive Project would be inoperable much or all of the time during its long  
25 lifespan due to ever worsening water supply coupled with new requirements to protect the Delta  
26 environment, Delta water quality, listed fish species, and public health.

### 27 **Inadequate Quantification of Water Available for Diversion and Export**

28 94. With respect to SWP deliveries, DWR calculated the firm yield of existing SWP



1 facilities is approximately 2.4 million acre-feet per year, based on the historical dry period from 1928  
2 through 1934. (*Planning and Conservation League v. Department of Water Resources* (2000) 83  
3 Cal.App.4th 892, 912-913.) The original long-term contracts between DWR and the water contractors  
4 were, however, predicated on the state’s plan to build out the SWP so as to deliver 4.23 million acre-  
5 feet of water to the contractors annually. (*Planning and Conservation League*, 83 Cal.App.4th 892,  
6 908 fn. 5.) There is a huge gap between what is promised and what can be delivered because the  
7 actual, reliable water supply from the SWP is more in the vicinity of 2 to 2.5 million acre-feet of water  
8 annually. (*Id.*) DWR’s EIR explains DWR has contracts with 29 public water agencies for up to a  
9 maximum amount of 4.17 million acre-feet of water per year. (**Final EIR** and Draft EIR, Ch. 6, p. 6-  
10 12.) Deliveries, however, have averaged only 2.9 million acre-feet over the past 10 years. (*Id.*)  
11 According to DWR’s CEQA Findings, deliveries have averaged 1.96 million acre-feet per year from  
12 2009 to 2018. (CEQA Findings p. 5-1.) “DWR’s fundamental purpose in proposing to develop new  
13 diversion and conveyance facilities in the Delta is to restore and protect the reliability of SWP water  
14 deliveries and, potentially, CVP water deliveries south of the Delta, consistent with the State’s Water  
15 Resilience Portfolio in a cost-effective manner.” (**Final EIR** and Draft EIR, Ch. 2, Purpose and Project  
16 Objectives, p. 2-2.)

17 95. Quantification is necessary to allow determination of whether a particular environmental  
18 impact is significant. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com’rs* (2001) 91  
19 Cal.App.4th 1344, 1370-1371.) The face value, or total volume of water authorized for diversion in the  
20 Sacramento River/Delta watershed is approximately 159 million acre-feet per year, which is over 5  
21 times the total annual average unimpaired outflow for the entire Bay-Delta watershed not even  
22 including riparian and pre-1914 appropriative claims. (*Water Board Staff Report/SED* Ch. 2, p. 2-117,  
23 Petitioners’ Comment Letter, p. 35, December 15, 2022.) DWR’s fundamental purpose in proposing  
24 this Project is to deliver about twice as much water as is actually available—to one of several potential  
25 user groups. Water allocated to SWP contractors is not available for alternative uses including  
26 increasing or at least maintaining in-stream and Delta flows. Allocating a fixed supply to one group of  
27 users—SWP contractors—results in water being unavailable to other users and the environment.  
28 Quantification of the water available for diversion and export is essential for evaluating this and other

1 Project impacts.

2 96. The Delta Reform Act requires quantification. That Act in Water Code section 85320  
3 requires that a project such as this not be incorporated into the Delta Plan and the public benefits  
4 associated with it not be eligible for state funding unless specific requirements are met. At the time the  
5 Legislature adopted the Delta Reform Act, the Project was known as the Bay Delta Conservation Plan.  
6 Water Code § 85320(b)(2)(A) requires the Project to comply “with Division 13 (commencing with  
7 Section 21000) of the Public Resources Code [CEQA], including a comprehensive review and analysis  
8 of all of the following:”

9 A reasonable range of flow criteria, rates of diversion, and other operational criteria  
10 required to satisfy the criteria for approval of a natural community conservation plan as  
11 provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other  
12 operational requirements and flows necessary for recovering the Delta ecosystem and  
restoring fisheries under a reasonable range of hydrologic conditions, which will identify  
the remaining water available for export and other beneficial uses.

13 97. Water Code section 85320(b)(2)(A) requires quantification of flows necessary to recover  
14 the Delta ecosystem and to identify the remaining water available for export and other beneficial uses.

15 98. The omission of quantification in DWR’s EIR was a failure to proceed in the manner  
16 required by CEQA.

### 17 **Failure to Disclose or Evaluate Flow Criteria**

18 99. The Delta Reform Act requires that any order approving a change in the point of  
19 diversion of the SWP from the south Delta to a point on the Sacramento River, as operation of the  
20 Project will require, “shall include appropriate Delta flow criteria ... .” (Water Code § 85086(c)(2).)

21 100. The EIR does not include or evaluate appropriate Delta flow criteria, and does not  
22 consider alternatives that include such criteria. Instead, the EIR relies on Delta flow standards that  
23 were developed nearly three decades ago.

24 101. The EIR’s failure to include or evaluate appropriate Delta flow criteria renders it  
25 inadequate as an informational document in support of DWR’s Project approval and inadequate to  
26 support an order approving a change in the point of diversion by a responsible agency.

### 27 **Unlawful Piecemealing**

28 102. CEQA prohibits the piecemealing or segmentation of environmental analysis. A lead  
agency must not piecemeal the analysis of several smaller projects that are part of a larger project, in

1 order to ensure “that environmental considerations not become submerged by chopping a large project  
2 into many little ones, each with a potential impact on the environment, which cumulatively may have  
3 disastrous consequences.” (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233  
4 Cal.App.3d 577, 592.) “Project” means the whole of an action.(CEQA Guidelines §15378(a))

5 103. On December 11, 2018, DWR extended the “term of each of the SWP water contracts to  
6 December 31, 2085.” (**Final EIR** and Draft EIR, Ch. 6, p. 6-25.) On March 27, 2020, DWR certified a  
7 Final EIR for long term operations of the State Water Project. DWR closed the public review period  
8 on the Draft EIR for that project on January 6, 2020. DWR issued the NOP for the Delta Conveyance  
9 Project a mere seven business days later, on January 15, 2020. According to the EIR for the Delta  
10 Conveyance Project, “DWR’s fundamental purpose in proposing to develop new diversion and  
11 conveyance facilities in the Delta is to restore and protect the reliability of SWP water deliveries and,  
12 potentially, CVP water deliveries south of the Delta, consistent with the State’s Water Resilience  
13 Portfolio in a cost-effective manner.” (**Final EIR** and Draft EIR, Ch. 2, Purpose and Project  
14 Objectives, p. 2.2.)

15 104. DWR’s EIRs on the SWP contract extensions and SWP long-term operations concealed  
16 rather than analyzed the proposed Delta Conveyance Project. In turn, the EIR on the Delta  
17 Conveyance Project takes the SWP contracts and SWP long-term operations as givens rather than  
18 analyzing their environmental impacts.

19 105. The deferral of determination of the operations plan for the Project and project-level  
20 analysis of the resulting environmental impacts of operations, constitute unlawful piecemealing of the  
21 environmental analysis of the Delta Conveyance Project from environmental analysis of dependent  
22 and related projects.

### 23 **Project Operations Will Have Significant, Unmitigated Impacts on Listed Fish Species**

24 106. Potential substantial impact on endangered, rare, or threatened species is per se  
25 significant. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007)  
26 40 Cal.4th 412, 449; CEQA Guidelines § 15065(a)(1).)

27 107. The EIR admits “The project alternatives potentially would have negative impacts on  
28 critical fish habitat and special status species.” (**Final EIR** and Draft EIR, Ch. 30, p. 30-24.) The EIR

1 admits the impacts of Project operations before mitigation will be significant on Fish and Aquatic  
2 Species. (**Final EIR** and Draft EIR, Executive Summary, p. ES-33, Impact AQUA-1.) The EIR makes  
3 specific admissions that Project operations will be significant on Sacramento River Winter-Run  
4 Chinook Salmon (*Id.*, Executive Summary, p. ES-33, Impact AQUA-2), Central Valley spring-run  
5 Chinook salmon (*Id.* p. ES-33, Impact AQUA-3), and on Central Valley steelhead, Delta smelt, and  
6 longfin smelt. (*Id.*, p. ES-34, Impacts AQUA-5, -6. -7.) Winter-run Chinook salmon are a state- and  
7 federally-listed endangered species; Central Valley spring-run Chinook salmon are a federally-listed  
8 threatened species; Central Valley steelhead are a federally-listed threatened species; Delta Smelt are a  
9 federally-listed threatened species; and longfin smelt are a state-listed threatened species and are  
10 proposed for federal listing as endangered.

11 108. The court held in *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116-1117  
12 that “Law is not required to abandon common sense.” The court held common sense informed it that  
13 the mitigation measures would not effectively replace the water that could be lost to the neighboring  
14 landowners. The EIR claims that the impacts after mitigation on Sacramento River winter-run  
15 Chinook salmon, Central Valley spring-run chinook salmon, Central Valley steelhead, Delta smelt,  
16 and longfin smelt though significant, would be less than significant after mitigation, which consists  
17 chiefly of habitat restoration (**Final EIR** and Draft EIR, Executive Summary, pp. ES-33, -34.) Those  
18 claims defy common sense and are not supported by substantial evidence. The fish need increased, not  
19 reduced flows to survive, yet the EIR proposes no measures that address the Project’s acknowledged  
20 and substantial diminution of flows. There is no substantial evidence that proposed mitigation is  
21 capable of reducing the impacts of diminished flows on the endangered and threatened fish species to  
22 less than significant levels. CDFW commented on DWR’s Draft EIR that there is not sufficient  
23 substantiation for its determination that the effects of construction and operation of the Project will be  
24 less than significant with mitigation on the listed fish species. (CDFW Comment Letter, p. 23,  
25 December 16, 2022.) The Water Board commented that the Draft EIR did not provide evidence as to  
26 how the proposed habitat restoration would reduce significant operational impacts to less than  
27 significant on Delta smelt and longfin smelt. (Water Board Comment Letter. p. 13, December 16,  
28 2022.) Petitioners in their June 29, 2023 supplemental comments on DWR’s Draft EIR, provided new

1 significant information, including EPA’s conclusion that, “given that the status of many Delta fish  
2 species is threatened, endangered, or other description of impairment, further diversion of Sacramento  
3 River water under the Project could very well lead to greater impairment or extinction.” (EPA  
4 Comment Letter on The Army Corps Draft EIS on Delta Conveyance Project, p. 5, detailed comments,  
5 March 16, 2023.) Petitioners in their October 30, 2023 supplemental comments on DWR’s Draft EIR  
6 provided significant new information in the *Water Board Staff Report/SED* about the dangers posed by  
7 new diversions and points of diversion for water quality and listed fish species, and the need to reduce  
8 exports to increase freshwater flows through the Delta.

9 109. DWR must be ordered to vacate its Project approval and EIR certification and prepare  
10 and circulate for public review and comment a revised Draft EIR including disclosure that the  
11 significant impacts of Project construction and operations on listed fish species will not be mitigated.

12 **Findings that the Project Would Not Result in Significant and Unavoidable Water Quality and**  
13 **Fishery Impacts Are Not Supported by Substantial Evidence or Common Sense**

14 110. CEQA defines “significant effect on the environment” to mean “a substantial, or  
15 potentially substantial, adverse change in any of the physical conditions within the area affected by the  
16 project including land, air, *water*, minerals, flora, *fauna*, ambient noise, and objects of historic or  
17 aesthetic significance.” (CEQA Guidelines § 15382, emphasis added.)

18 111. “Law is not required to abandon common sense. Here, our common sense informs us  
19 that the mitigation measures will not effectively replace the water that could be lost by the neighboring  
20 landowners.” (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116-7.) The EIR defies  
21 common sense in claiming that a project constructed for the purpose and with the capacity to take  
22 away freshwater flows from the Sacramento River in a significant amount compared to the typical  
23 entire freshwater flow of the Sacramento River at the point of diversion would not substantially and  
24 unavoidably adversely change, regardless of claimed mitigation measures, downstream water quality,  
25 fisheries, and fish habitat including designated critical habitat for listed threatened and endangered  
26 species of fish.

27 112. DWR must be ordered to vacate its Project approval and EIR certification and prepare  
28 and circulate for public review and comment a new Draft EIR that accomplishes environmental full

1 disclosure including disclosure of the substantial and unavoidable adverse impacts on Delta water  
2 quantities, water quality, fish, and fisheries resulting from operation of the Project.

### 3 **Failure to Provide a Cost-Benefit Analysis**

4 113. An accurate economic analysis is required “to allow an informed comparison of the  
5 alternatives considered in” an environmental review document. (*Natural Resources Defense Council v.*  
6 *U.S. Forest Service* 421 F.3d 797, 813 (9th Cir. 2005)(EIS adequacy case under NEPA.)

7 114. Despite being requested to do so by Petitioners in their April 14, 2020 comment letter on  
8 DWR’s NOP and December 15, 2022 comment letter on DWR’s Draft EIR, DWR failed to provide a  
9 benefit-cost analysis during the period for public review of the Draft EIR. DWR still has not provided  
10 a benefit-cost analysis for public review and will not do so, if at all, until months after its certification  
11 of the Final EIR. This omission by DWR facilitates DWR’s limitation of alternatives to different  
12 capacities of the Project’s tunnel in the EIR.

13 115. DWR’s certification of the EIR and approval of the Project must be set aside because  
14 DWR’s failure to provide a benefit-cost analysis during the public review period on its Draft EIR  
15 prevented an informed comparison of alternatives presented in the Draft EIR with alternatives  
16 proposed by Petitioners, public agencies, individuals, and other organizations.

### 17 **Failure to Consider Reasonably Foreseeable Indirect Physical Changes in the Environment**

18 116. An agency must consider reasonably foreseeable indirect physical changes in the  
19 environment resulting from the proposed action. (CEQA Guidelines §15064(d)(1),(2).)

20 117. The Delta Conveyance Project would remove a physical barrier to exporting more water.  
21 The Project is the key that would unlock California rivers for proposed projects such as the Sites  
22 Reservoir, the Shasta Dam raise, the Temperance Flat Reservoir, the Delta-Mendota Canal and the  
23 Mid-Valley Canal. These other projects enabled by the Delta Conveyance Project would result in  
24 reasonably foreseeable indirect significant physical changes in the environment.

25 118. DWR’s EIR has failed to disclose and evaluate the indirect physical changes in the  
26 environment including upstream impacts resulting from the Delta Conveyance Project that would be  
27 caused by projects enabled and facilitated by the Delta Conveyance Project such as the Sites  
28 Reservoir, Shasta Dam raise, and Temperance Flat Reservoir.

1 119. DWR’s EIR has failed to disclose and evaluate the growth inducing impacts that would  
2 result from the Delta Conveyance Project and the projects enabled and facilitated by the Delta  
3 Conveyance Project

4 120. DWR’s failure to disclose and evaluate the indirect physical changes in the environment  
5 resulting from the Delta Conveyance Project constitute a failure to proceed in the manner required by  
6 CEQA.

7 **Failure to Include Worst-Case Analysis in the EIR**

8 121. DWR failed to include worst case analysis in either the Draft or Final EIR. It would be  
9 possible to operate the Project intakes to divert up to 6,000 cfs of fresh water from the Sacramento  
10 River. In the past, the Water Board has approved temporary urgency change petitions sought by DWR  
11 and or the U.S. Bureau of Reclamation always or almost always. There will be pressure including  
12 political pressure in the future to grant such petitions or otherwise seek maximum diversions for the  
13 SWP and CVP from the Project intakes.

14 122. DWR’s EIR includes neither worst-case scenario analysis or even realistic analysis of  
15 the quantities of freshwater reasonably likely to be diverted by the Project no matter how bad future  
16 conditions are in terms of both the upstream watersheds and in the Delta.

17 123. The failure to include worst-case analysis in the EIR was a failure to proceed in the  
18 manner required by CEQA.

19 **Failure to Provide Full Environmental Disclosure**

20 124. “CEQA requires full environmental disclosure...” (*Communities for a Better*  
21 *Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 88.) Pursuant to CEQA, agencies must use  
22 their best efforts to find out and disclose all that they reasonably can. (*Banning Branch Conservancy v.*  
23 *City of Newport Beach* (2017) 2 Cal.5th 918, 938; CEQA Guidelines, §§ 15144; 15151.)

24 125. DWR failed to use its best efforts to find out and disclose all that it reasonably could  
25 with respect to such environmental impacts as impacts on surface water, water supply, public health,  
26 endangered and threatened fish species, water quality, as well as the combined effects resulting from  
27 Project operations reducing freshwater flows coupled with future climate change reductions of  
28 freshwater flows in either the Draft or Final EIR.

1 126. DWR’s CEQA Findings admitted that “While late letters have been reviewed and  
2 considered by DWR, DWR did not include late letters, or responses thereto, in the Final EIR.” (CEQA  
3 Findings, p. 5-11.) Consequently, DWR never disclosed in either a revised Draft or the Final EIR the  
4 information in the September 28, 2023, *Water Board Staff Report/SED* that exports must be reduced in  
5 order to increase freshwater flows through the Delta. DWR also never disclosed in either a revised  
6 Draft or the Final EIR the May 25, 2023, Auditor Report explaining DWR’s deficiencies in accounting  
7 for the effects of climate change on future water supplies. DWR never disclosed in either a revised  
8 Draft or the Final EIR that the EPA had explained on March 16, 2023 that the diversion of Sacramento  
9 River water for the Project could very well lead to greater impairment or extinction of threatened and  
10 endangered fish species. DWR never disclosed in a revised Draft or the Final EIR any of the new  
11 information it received in the form of supplemental comment letters after December 16, 2022,  
12 regardless of its significance. DWR also did not provide any public comment period on the Final EIR it  
13 issued on December 8, 2023. DWR said in its December 8, 2023 announcement of its release of the  
14 Final EIR, “DWR is releasing the Final EIR to public agencies prior to certification per CEQA  
15 requirements. While CEQA does not require—and DWR is not providing—a public comment period  
16 on a Final EIR, it does require DWR to send its proposed responses at least 10 days prior to a decision  
17 on certification of the EIR.”

18 127. DWR’s failures to disclose the impacts of Project operations on such resources as surface  
19 water, water supply, public health, endangered and threatened fish species, water quality, as well as the  
20 combined effects resulting from Project operations reducing freshwater flows coupled with future  
21 climate change reductions of freshwater flows constitutes a failure to make the good faith efforts to  
22 provide full environmental disclosure required by CEQA.

23 128. DWR’s failures to disclose information no matter how significant provided to DWR by  
24 supplemental comment letters or by sister agencies after December 16, 2022 constitutes a failure to  
25 make the good faith efforts to provide full environmental disclosure required by CEQA.

#### 26 **Failure to Revise and Recirculate the Draft EIR**

27 129. CEQA requires revision of the Draft EIR and recirculation when a feasible project  
28 alternative or mitigation measure considerably different from others previously analyzed would clearly



1 lessen the significant environmental impacts of the project but the project’s proponents decline to  
2 adopt it. (CEQA Guidelines § 15088.5(a)(3).) Revision and recirculation of a revised Draft EIR by  
3 DWR is required to include the CEQA-required range of reasonable alternatives including alternatives  
4 required by CEQA, and related regulatory requirements including the Delta Reform Act, the Climate  
5 Change and Climate Adaptation legislation, and CESA.

6 130. Revision and recirculation of a revised Draft EIR are also required when the Draft EIR is  
7 so fundamentally and basically inadequate and conclusory in nature that meaningful public review and  
8 comment were precluded. (CEQA Guidelines § 15088.5(a)(4).) Revision and recirculation of a revised  
9 Draft EIR by DWR is required because the Delta Conveyance Project Draft EIR was so fundamentally  
10 and basically inadequate and conclusory in nature that meaningful public review and comment were  
11 precluded.

12 131. Significant new information regarding new or potentially more severe environmental  
13 impacts was presented to DWR after the period for public comment on the Draft EIR closed on  
14 December 16, 2022. DWR’s failure to revise the Draft EIR to include the significant new information  
15 and recirculate the revised Draft EIR for public review and comment constitutes failure to provide the  
16 CEQA-required environmental full disclosure.

17 132. DWR’s failure to recirculate the Draft EIR is not supported by substantial evidence and  
18 represents a failure to proceed in the manner required by law.

### 19 **Failure to Prepare a Subsequent EIR**

20 133. CEQA requires preparation of a subsequent EIR when substantial changes occur with  
21 respect to the circumstances under which the project is being undertaken that will require major  
22 revisions in the EIR. (Pub. Res. Code §21166(b).)

23 134. DWR’s EIR was based on the claim that the diversions for Project operations would be  
24 lawful under existing standards including flow objectives for the protection of fish and wildlife  
25 established by the Water Board in 1995, by Water Board Decision D-1641. (DWR’s CEQA Findings,  
26 pp. 8-9, Findings Exhibit A, p. 11.)

27 135. The Water Board’s *Staff Report/SED* explained that the last major update to the flow  
28 objectives for the protection of fish and wildlife in the Sacramento River watershed and the Delta

1 occurred in 1995. (*Staff Report/SED*, Ch. 5, p. 5-3.) The Water Board is currently updating the flow  
2 objectives to increase freshwater flows by reducing exports. The impacts of the Project’s diversions,  
3 which would not commence until 2040 at the earliest, are being measured against out of date standards  
4 which are now being strengthened by the Water Board. DWR’s EIR does not address this  
5 anachronism, but instead expressly relies on the standards that are nearly three decades old.

6 136. DWR must prepare a subsequent EIR to address the changed circumstances under which  
7 the proposed Project is being undertaken.

### 8 **Inadequate Project Description**

9 137. Pursuant to CEQA, “[a]n accurate, stable and finite project description is the *sine qua*  
10 *non* [absolutely indispensable requirement] of an informative and legally sufficient EIR. However, a  
11 curtailed, and enigmatic or unstable project description draws a red herring across the path of public  
12 input. Only through an accurate view of the project may the public and interested parties and public  
13 agencies balance the proposed project’s benefits against its environmental cost, consider appropriate  
14 mitigation measures, assess the advantages of terminating the proposal and properly weigh other  
15 alternatives.” (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645,  
16 654 [internal citations omitted].)

17 138. The EIR fails to provide the accurate, stable and finite project description required by  
18 CEQA. There is no accurate, stable, and finite project description in the EIR as to how much water the  
19 Project will divert under various levels of flow conditions. That includes no description of how much  
20 diversions will be reduced or eliminated as conditions continue to worsen due to climate change; as  
21 conditions continue to worsen for endangered and threatened species; as public health impacts  
22 including harmful algal blooms impacts worsen for Delta residents and users; and as recreational and  
23 aesthetic enjoyment of the Delta by Delta residents and users is impaired. The absence of the CEQA-  
24 required accurate, stable, and finite project description is also a critical inadequacy in attempting to  
25 determine whether the Project is a feasible alternative. If the Project is unable to furnish sufficient  
26 quantities of water to the exporters as the water crisis continues to worsen; it will simply be an  
27 expensive stranded asset.

28 139. The EIR states the purpose of the project is “to restore and protect the reliability of State

1 Water Project (SWP) water deliveries and, potentially, Central Valley Project (CVP) water deliveries  
2 south of the Delta, consistent with the State’s Water Resilience Portfolio in a cost-effective manner.”  
3 **(Final EIR and Draft EIR, Executive Summary, p. ES-1.)** Inclusion of CVP delivery reliability could  
4 more than double Project impacts. Including the CVP would produce numerous indirect and  
5 cumulative impacts not disclosed or evaluated in the EIR. The EIR fails to disclose and evaluate or  
6 even include in the project description, the impacts of Project facilitated additional projects and water  
7 exports on source watersheds and the water system.

8 140. The EIR does not include an adequate description of the Project’s operations. There is  
9 no controlling operations plan for the Project. The absence of the required accurate, stable, and finite  
10 project description results in the absence of the required presentation of a range of reasonable  
11 alternatives alleged above. The absence of accuracy and finite detailing of quantities and timing of  
12 water diverted and disclosure of the expected public subsidy for the Project misled the public during  
13 its opportunity to comment on the proposed Project.

14 141. DWR’s stated intent is to operate the Project in an integrated fashion with the SWP and  
15 CVP. The EIR fails, however, to describe how the Project will operate in combination with reservoirs  
16 and other SWP and CVP infrastructure.

17 142. DWR must be ordered to vacate its Project approval and EIR certification and prepare  
18 and circulate for public review and comment a revised Draft EIR including the required accurate,  
19 stable and finite Project description including a detailed operations plan, assessment of the  
20 environmental impacts resulting from operations, and disclosure of how much the Project would really  
21 cost, and whether the Project will be subsidized by the public.

### 22 **Inadequate Analysis of the “No Project” Alternative**

23 143. Pursuant to CEQA, “[t]he purpose of describing and analyzing a no project alternative is  
24 to allow decision makers to compare the impacts of approving the proposed project with the impacts of  
25 not approving the proposed project.” (15126.6(e)(1).) The description offered by DWR is inadequate,  
26 as it does not provide sufficient information to allow decision makers to make such comparison. DWR  
27 has also not provided adequate information to give decision makers a full understanding of the existing  
28 conditions.

1           144. The EIR fails to include any meaningful disclosure or analysis of existing operations of  
2 reservoirs and other SWP and CVP facilities. The Draft EIR merely states that “The No Project  
3 Alternative ... includes continuation of operations of the SWP and CVP” subject to various regulatory  
4 constraints. (Draft EIR, p. 3C-9.) These constraints, however, do not describe the existing physical  
5 conditions, including baseline operations of the SWP and CVP, that must under CEQA form the  
6 starting point for evaluating the Project’s impacts.

7           145. DWR must be ordered to vacate its Project approval and EIR certification and prepare  
8 and circulate for public review and comment a revised Draft EIR including the required disclosure and  
9 analysis of the No Project alternative.

10                   **Failure to Adequately Analyze Long-Term Water Operations and Supplies**

11           146. Under CEQA, future water sources “and the impacts of exploiting those sources are not  
12 the type of information that can be deferred for future analysis.” (*Vineyard Area Citizens for*  
13 *Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.) “An EIR that  
14 neglects to explain the likely sources of water and analyze their impacts, but leaves long-term water  
15 supply considerations to later stages of the project, does not serve the purpose of sounding an  
16 environmental alarm bell before the project has taken on overwhelming bureaucratic and financial  
17 momentum.” (*Id.*, at p. 441.)

18           147. The absence of a detailed operations plan including quantification and timing of  
19 freshwater flow diversions during operations of the Tunnel is an unlawful omission and unlawfully  
20 defers analysis of this critical long-term water supply information.

21           148. The EIR fails to include an adequate discussion and analysis of California’s over-  
22 appropriated water rights system, the fact that Delta exports are legally limited to water surplus to both  
23 the needs of the Delta and upstream areas of origin, and the implications of impending climate change  
24 on future water deliveries for the Project. For example, reduced runoff caused by climate change  
25 would draw the ecologically critical low salinity zone eastward, necessitating corresponding increases  
26 in Delta outflow to protect Delta and longfin smelt, endangered salmon, other Delta public trust  
27 resources, and important agricultural land with water rights superior to DWR. But increased outflow to  
28 protect the Delta estuary would decrease south-of-Delta exports, worsening the ratio by which Project

1 costs exceed Project benefits.

### 2 **Failure to Adequately Analyze the Project's Cumulative Impacts**

3 149. An EIR must discuss cumulative impacts, or the collectively significant changes in the  
4 environment resulting from the incremental impacts of the project “when added to other closely  
5 related past, present, and reasonably foreseeable probable future projects.” (Guidelines, §§ 15355(b),  
6 15130(a)(1).) An agency must use standards of practicality and reasonableness as well as its best  
7 efforts to fully disclose cumulative impacts of a project. (Guidelines, §§ 15130(b), 15144, 15151.)

8 150. The EIR fails to adequately consider the Project's cumulative effects by focusing solely  
9 on the Project while ignoring the Project's relationship to the long-term operations of the CVP and  
10 SWP facilities, including operation of the upstream CVP and SWP reservoirs. In the alternative, the  
11 EIR's failure to consider these impacts constitutes unlawful piecemealing.

12 151. Planned long-term operations of the CVP and SWP system determine whether the  
13 Tunnel might arguably make any sense for water supply purposes. In turn, whether or not the new  
14 conveyance proposed by the Project is approved will make a major difference in the actual long-term  
15 operations of the CVP and SWP system. Despite this extremely close relationship, separate  
16 environmental review processes for the Project and the long-term operation of the CVP and SWP were  
17 conducted. The EIR fails to adequately consider the environmental review conducted for the  
18 Coordinated Long-Term Operation of the CVP and SWP.

19 152. There is complete interconnection of the Project and the long-term operation of the CVP  
20 and SWP, but the EIR fails to adequately analyze the cumulative impacts of these projects as a whole.  
21 The Federal and State water management systems in the Delta are highly interconnected, both  
22 functionally and physically. The EIR does not address how changes in the Delta can affect resources in  
23 downstream waters, such as San Francisco Bay, and require changes in upstream operations, which  
24 may result in indirect environmental impacts that must also be evaluated.

25 153. The EIR fails to properly analyze cumulative impacts in that it provides an unduly  
26 limited cumulative projects list, and fails to include continuing SWRCB proceedings as a cumulative  
27 project. It also fails to sufficiently analyze cumulative impacts on Delta, upstream and downstream  
28 water and biological resources, and fails to properly analyze cumulative impacts regarding changing

1 storm patterns, sea level rise, and other impacts of climate change.

2 154. The EIR systematically failed to adequately analyze new upstream facilities, Shasta  
3 Dam enlargement, a new Temperance Flat dam and reservoir on the San Joaquin River, and the Sites  
4 Reservoir adjacent to and dependent upon the existing Sacramento River water supply, all of which  
5 are proposed to be constructed in the foreseeable future, with reasonably foreseeable and potentially  
6 significant cumulative environmental effects in combination with the Project. The Sites project,  
7 approved in November 2023, will divert large volumes of Sacramento River water during fall, winter,  
8 and spring for storage in a new reservoir with a capacity of about 1.5 million acre-feet, placing a  
9 significant stress on and adversely affecting listed salmon in the same system from which the Project  
10 will extract water. The Shasta Dam enlargement, which is the subject of a Supplemental EIS, has not  
11 been approved, but proposes to raise Shasta Dam to add up to 634,000 acre-feet of storage capacity to  
12 the CVP. As the Project would not create new water, it is dependent on projects like Sites and the  
13 Shasta Dam enlargement to achieve its stated purposes.

#### 14 **Failure to Adequately Analyze the Project's Significant Impacts**

15 155. The EIR fails to adequately disclose and discuss significant past, present, and future  
16 groundwater and streamflow depletion throughout the Bay/Delta watershed. Streamflow depletion is  
17 not evaluated adequately in the EIR.

18 156. The EIR fails to adequately describe sources of additional spring outflow, a necessary  
19 component for analyzing the environmental effects of the Project and for determining what effects  
20 implementing the Project would have on non-participating CVP and SWP contractors and other  
21 Sacramento Valley water users. The EIR fails to provide information regarding willing sellers,  
22 including their identity, location, timing, and ability to provide water, information that is essential for  
23 adequately assessing the environmental effects of providing additional spring outflow.

24 157. The EIR fails to adequately analyze the Project's impacts on upstream reservoir  
25 operations, and in turn fails to adequately analyze the impacts of the upstream reservoir operations on  
26 the Project and on other downstream users and the greater environment. The EIR does not describe,  
27 and the Project does not provide for, any minimum carryover storage requirements for any of the  
28 major SWP and CVP reservoirs. The EIR does not describe any enforceable or binding mitigation

1 requirements regarding reservoir levels. The result is that real world operators will have significant  
2 discretion to draw down reservoirs lower than the levels shown in modeling results. The SWP and  
3 CVP will thus be under tremendous pressure to increase export of reservoir water. Increased export of  
4 water stored in SWP and CVP reservoirs would exacerbate storage conditions in those reservoirs in  
5 subsequent dry water years, particularly when subsequent dry water years become part of dry year  
6 sequences. Increased exports of stored water in wetter water years will increase the risk that during dry  
7 year sequences, storage in reservoirs will be insufficient to meet in-Basin uses.

8 158. The EIR fails to disclose and evaluate the potential environmental consequences of the  
9 Project's addition of a new point of control over Delta inflows at the north Delta intakes. Under  
10 current conditions, the control points for regulating Delta inflows are far upstream, and must maintain  
11 an appropriate margin of error. The EIR fails to acknowledge that this margin of error may be  
12 protective, and thus fails to consider potential effects on listed fish species, public trust resources, and  
13 water quality in the Delta that may result from the finer control over Delta inflow that will occur with  
14 Project operations.

15 159. The EIR uses flawed historical modeling analysis. A model for a natural system needs a  
16 formal effort to quantify uncertainty, so that the various benefits and costs can be put into perspective.

17 160. The EIR fails to adequately assess the seismic risks to the Project.

18 161. The EIR fails to adequately analyze the potential for subsidence and subsurface effects  
19 during both the construction and operation of the project.

20 162. The EIR both ignores and fails to adequately analyze the real trend, extent and  
21 magnitude of continuing declines in pelagic and anadromous fisheries. Chapter 7.6.2 of the *Water*  
22 *Board Staff Report/SED* explains that "Anadromous salmonids, which use habitat in the Bay-Delta  
23 estuary and upstream tributaries, have also exhibited substantial declines in population abundance in  
24 recent decades." (*Water Board Staff Report/SED*, Ch. 7.6.2, Aquatic Biological Resources, p. 7.6.2-4.)  
25 The report goes on to explain:

26 It is estimated that the average annual natural production of Sacramento River  
27 winter-run Chinook salmon, Sacramento River spring-run Chinook salmon, Sacramento  
28 River fall-run Chinook salmon (mainstem), and Sacramento River late fall-run Chinook  
salmon (mainstem) decreased between 1967 and 1991 and between 1992 and 2015 by 89,  
61, 43, and 52 percent, respectively (see Table 3.4-3 in Chapter 3). Available data also

1 show a long-term decline in escapement of steelhead from the Sacramento and San  
2 Joaquin River basins (McEwan 2001). Hatcheries now provide most of the salmon and  
steelhead caught in the commercial and recreational fisheries. (*Id.* p. 7.6.2-4.)

3 163. “The population abundance of Sacramento splittail, Delta smelt, and longfin smelt have  
4 declined by 98, 98, and 99 percent, respectively, since sampling began in 1967.” (*Water Board Staff*  
5 *Report/SED*, Ch. 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, p. 3-  
6 134.) Chapter 7.6.2 explains how the proposed increases in Delta inflows and outflows would improve  
7 flow and habitat conditions for anadromous, estuarine, and resident fish conditions to support their life  
8 stage needs. (*Id.* Ch. 7.6.2, p. 7.6.2-36 and pp. 7.6.2-35-39.)

9 164. Escapement of winter-run Chinook salmon was 100,000 fish in the 1960s, as high as  
10 35,000 fish in 1976, since declining to a few thousand. (*Water Board Staff Report/SED*, Ch. 3,  
11 Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, p. 3-23.) Spring-run  
12 Chinook salmon runs were as large as 600,000 fish from 1880 to 1940 but now average around 14,500  
13 fish. (*Id.* p. 3-25.) Higher flows are protective of all Central Valley Chinook salmon and steelhead as  
14 they migrate through the Delta as juveniles. (*Id.* p. 3-42.)

15 165. The EIR fails to disclose and analyze the impacts of the continued use of the existing  
16 South Delta project pumps in combination with Project diversions since they will be used in low water  
17 years to provide the largest amount of water diverted from the Bay Delta under the new project  
18 operational plans.

19 166. The EIR contains simple admissions of obvious and significant environmental impacts  
20 without accompanying evaluation and analysis of those significant impacts.

21 167. The EIR fails to adequately disclose and analyze the effects of Project construction on  
22 groundwater movement and dependent surface vegetation.

23 168. The EIR fails to adequately disclose or quantify the amounts of water that would be  
24 taken by the Project.

25 169. The EIR fails to adequately disclose or evaluate the environmental impacts of supplying  
26 the quantities of water for export by Project operations.

27 170. The EIR fails to disclose or address that the only benefit cost analysis of the earlier  
28 version of the Project demonstrated the costs would exceed benefits by several times and



1 consequently, the Project would not make economic sense.

2 171. The EIR fails to adequately disclose and analyze Project construction and operational  
3 impacts on recreation.

4 172. The EIR fails to adequately disclose and analyze the Project's noise impacts on sensitive  
5 wildlife receptors associated with Project construction and operation.

6 173. The EIR fails to adequately disclose and analyze Project construction and operational  
7 impacts on aesthetics and visual resources.

8 174. The EIR fails to adequately disclose and analyze Project construction and operational  
9 impacts on public health.

10 175. The EIR adopts thresholds of significance to analyze environmental impacts that are not  
11 supported by substantial evidence.

12 176. The EIR fails to adequately disclose and analyze environmental justice impacts of  
13 Project construction and operations.

14 177. The EIR fails to disclose and evaluate the Project's inconsistencies with the Delta  
15 Reform Act.

#### 16 **Failure to Adequately Mitigate Significant Impacts**

17 178. The EIR fails to provide realistic mitigation plans for the very real risk that liquefaction  
18 could destroy the Project once it is built (or even damage components of the system during  
19 construction).

20 179. The Project's Findings label certain environmental impacts as significant without  
21 adequately analyzing those significant impacts. The Findings concede numerous substantial adverse  
22 effects likely to be caused by the construction and "operation of reliable water supply" projects that  
23 cannot be avoided and that cannot be mitigated to a "less-than-significant level."

24 180. New state-of-the-art fish screens for the south Delta were not proposed or analyzed even  
25 though they were required mitigation measures in the previous CalFed program. Evaluation of the  
26 success of any new fish screens was to occur before further consideration of a peripheral canal. New  
27 screens in the South Delta should have been considered as potential mitigation for the Project in the  
28 EIR and the failure to do so violates CEQA.

1 181. Mitigation measures proposed to reduce or avoid the Project’s effects on fully protected  
2 sandhill cranes are inadequate. On the contrary, the EIR describes measures that are ineffective or  
3 improperly deferred.

4 182. Mitigation measures proposed to reduce or avoid the Project’s effects on the giant garter  
5 snake, a state- and federally-listed threatened species, are inadequate. On the contrary, the EIR  
6 describes measures that are ineffective or improperly deferred.

7 183. Mitigation measures proposed to reduce the air quality, traffic, noise, and other  
8 environmental impacts associated with the Project’s construction and operations are inadequate.

9 184. Numerous measures are described in the EIR that would purportedly reduce or avoid the  
10 Project’s environmental effects as “Environmental Commitments” or “Avoidance and Minimization  
11 Measures.” These measures are not adopted as binding and enforceable mitigation measures under  
12 CEQA and therefore cannot be relied on to reduce or avoid the Project’s environmental effects.

### 13 **Inadequate and Improper Analytical Baseline**

14 185. The EIR’s formulation of baseline environmental conditions is fundamentally flawed  
15 and deceptive because, among other flaws, it fails to provide accurate information regarding existing  
16 surface water and groundwater supply and demand. The vague and inaccurate environmental baseline  
17 established in the EIR violates CEQA and makes any analysis of the Project’s impacts impossible. The  
18 EIR’s omission of required information in its baseline analysis violates the foundational CEQA  
19 mandate for informed decision-making. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177  
20 Cal.App.4th 957, 987.)

21 186. The EIR also fails to discuss over-allocated water entitlements that create unrealistic  
22 demands for Delta water, or “paper water.” In fact, the SWP only supplies approximately half of its  
23 entitlements to contract water per year. (*PCL v. DWR* (2000) 83 Cal.App.4th 892, 908.) Courts have  
24 criticized planning based on paper water, recognizing the “huge gap between what is promised and  
25 what can be delivered.” (*PCL v. DWR, supra*, 83 Cal.App.4th at 903 [“‘Entitlements’ is a misnomer,  
26 for contractors surely cannot be entitled to water nature refuses to provide or the body politic refuses  
27 to harvest, store and deliver”].) The EIR’s failure to include realistic water supply data in its  
28 environmental baseline is prejudicial because it undermines the statutory goals of an EIR to inform

1 decision makers and the public of potentially significant adverse effects on the physical environment.  
2 The vague and cursory water supply and demand conditions as described by the EIR without adequate  
3 support by quantitative data does not provide sufficient baseline information that would allow  
4 decision-makers or the public to evaluate the significant adverse water resources and biological  
5 impacts that the Project will have on the environment thereby violating CEQA Guideline section  
6 15125(a).

### 7 **Failure to Adequately Disclose and Analyze Water Quality Impacts**

8 187. The EIR implausibly claims the massive water Project and its new diversions upstream  
9 from the already impaired Delta would have no significant environmental impacts on water quality.  
10 (**Final EIR**, Executive Summary and Draft EIR, pp. 32-33.) The EIR fails to adequately disclose and  
11 analyze the impacts to water quality and contaminant control by diverting large amounts of water in  
12 the north Delta. Water quality and quantity are flip sides of the same coin; changes in flow change  
13 assimilative capacity, residence time and the fate and transport of contaminants. Hydrologic changes  
14 modify constituent concentration and bioavailability, which in turn can adversely impact the aquatic  
15 ecosystem and other beneficial uses. Over mere decades, water project operations have deprived the  
16 Delta estuary of half its flow, turning the natural hydrograph on its head, reducing temporal and spatial  
17 variability, eliminating crucial habitat, complexity and diversity, and depriving the estuary of dilution  
18 necessary to assimilate pollutant mass loading. Water from the Sacramento River is the largest source  
19 of inflow to the Delta and is significantly less polluted than water entering the Delta from the San  
20 Joaquin River. Sacramento River water drawn across the Delta to the existing export pumps is a major  
21 reason water quality in the Central and South Delta is better than it would otherwise be. Diversion of  
22 millions of acre-feet of better quality Sacramento River water will increase the concentration of  
23 numerous constituents in the water remaining in the Delta. It will also increase the residence time of  
24 water in the Delta, thereby enhancing the opportunity for pollutants to interact with the environment.  
25 This effect is exacerbated in tidal environments where pollutants tend to move back and forth with the  
26 tides.

27 188. Exceedances of human health criteria have direct adverse impacts to people.  
28 Exceedances of criteria protecting other identified beneficial uses of water will adversely impact those

1 who rely on the beneficial use. Multiple exceedances of a pollutant within a waterway qualify the  
2 waterway for listing as an impaired waterbody and/or significantly impact issuance of federal Clean  
3 Water Act and California Waste Discharge Requirements. DWR's modeling for the EIR is inadequate.

4 189. The EIR lacks discussion or attempted quantification regarding the uncertainty of  
5 conclusions. Nor is there any discussion of how heavily criticized comparative models, used outside  
6 their temporal, spatial and resolution limits, may or may not be sufficient for making explicit  
7 determinations regarding the potential effects of the Project on constituents and impacts to water  
8 quality standards caused by a modified hydrology, reduced dilution and increased residence time. The  
9 EIR fails to comply with prevailing standards for technical analysis, which is why the environmental  
10 assessment is inappropriate, technically invalid, unsupported by substantial evidence, and fails to meet  
11 the fair disclosure requirements of CEQA.

12 190. Evaluation of water quality and the Project's potential adverse impacts is flawed because  
13 the EIR fails to analyze the potential to exceed water quality standards with respect to permitting  
14 requirements pursuant to the federal Clean Water Act.

15 191. The Delta is an impaired waterbody because of numerous pollutants including unknown  
16 toxicity and, in effect, is a gigantic mixing bowl for an astonishing array of chemicals; it failed to  
17 consider the additive and synergistic impacts of multiple pollutants mixing together. If two or more  
18 constituents are present together in water, they may exert a combined adverse effect on beneficial uses  
19 of water even though none of the constituents individually exceeds a water quality standard. The  
20 Central Valley Regional Water Quality Control Board's Central Valley *Water Quality Control Plan*  
21 *for the Sacramento and San Joaquin River Basins* includes an implementation policy regarding  
22 assessment of additive and synergistic effects.

23 192. The EIR lacks discreet, defensible analysis of the Project's consistency with  
24 antidegradation policies and requirements, as required by CEQA. Section 101(a) of the Clean Water  
25 Act, the basis for the antidegradation policy, states that the objective of the Act is to "restore and  
26 maintain the chemical, biological and physical integrity of the nation's waters." Section 303(d)(4) of  
27 the Clean Water Act carries this further, referring explicitly to the need for states to satisfy the  
28 antidegradation regulations before taking action to lower water quality. These regulations (40 CFR §

1 131.12(a)) describe the federal antidegradation policy and dictate that states must adopt both a policy  
2 at least as stringent as the federal policy as well as implementing procedures. The Clean Water Act  
3 requires the full protection of identified beneficial uses. The federal antidegradation policy states  
4 “[t]he antidegradation policy and implementation methods shall, at a minimum, be consistent with the  
5 following: (1) Existing instream water uses and the level of water quality necessary to protect the  
6 existing uses shall be maintained and protected.” (40 CFR § 131.12.) U.S. EPA Region 9’s guidance  
7 on implementing antidegradation policy states, “[a]ll actions that could lower water quality in Tier II  
8 waters require a determination that existing uses will be fully maintained and protected.” (EPA,  
9 Region 9, Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12, page 7.) The  
10 Delta is classified as a Tier II “high quality,” waterbody by U.S. EPA and the Water Board.  
11 California’s antidegradation policy is composed of both the federal antidegradation policy and the  
12 State Board’s Resolution 68-16 (State Water Resources Control Board, Water Quality Order 86-17, p.  
13 20; Memorandum from Chief Counsel William Attwater, SWRCB to Regional Board Executive  
14 Officers, “Federal Antidegradation Policy,” pp. 2, 18 [Oct. 7, 1987] [“State Antidegradation  
15 Guidance”].) Implementation of the state’s antidegradation policy is guided by the State  
16 Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 (“APU  
17 90-004”) and USEPA Region IX, “Guidance on Implementing the Antidegradation Provisions of 40  
18 CFR 131.12” (3 June 1987, Region IX Guidance), as well as Water Quality Order 86-17. The state  
19 must apply the antidegradation policy whenever it takes an action that will lower water quality. (State  
20 Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1.) Application of the policy does  
21 not depend on whether the action will actually impair beneficial uses. (State Antidegradation  
22 Guidance, p. 6.) As noted above, federal antidegradation policy requires full protection of beneficial  
23 uses. California’s antidegradation policy (Resolution 68-16) requires, among other things, that existing  
24 high quality water will be maintained until it has been demonstrated that any change will be with the  
25 maximum benefit to the people of the State; that the change will not unreasonably affect present and  
26 anticipated beneficial uses; and that the change will not result in water quality less than prescribed in  
27 the policies. The Project, as defined by the alternatives described in the EIR, will result in reduced  
28 flows and lower water quality in the Delta for numerous constituents. The Project will require a

1 number of waste discharge permits from the State or Regional Water Quality Control Boards for  
2 construction and operation. As the Project will require a Clean Water Act section 404 permit from the  
3 Army Corps, it will also require a Clean Water Act section 401 Water Quality Certification, which is  
4 necessary for any “federal license or permit to conduct and activity...[that] may result in any discharge  
5 into navigable waters.” (33 U.S.C. § 1341(a)(1).) In order to obtain a 401 certification, a project must  
6 meet the water quality requirements of Clean Water Act section 303 (33 U.S.C. § 1341(d).) The state  
7 cannot issue a section 401 Certification if there is no reasonable assurance that the Project will meet  
8 water quality standards. As confirmed by the Supreme Court, section 401 Certification considers the  
9 impacts of the entire activity and not simply the impacts of a particular discharge that triggers section  
10 401. (*PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994).)  
11 Water quantity is related to water quality because a sufficient lowering of the water quantity in a  
12 waterbody can destroy its designated uses, which the Clean Water Act is designed to prevent. Since  
13 water quality standards consist of both the water quality criteria and the designated uses of the  
14 navigable waters involved, an antidegradation analysis is required to ensure that the “existing instream  
15 water uses and the level of water quality necessary to protect the existing uses shall be maintained and  
16 protected.” (40 CFR § 131.12.) An antidegradation analysis must analyze whether: such degradation is  
17 consistent with the maximum benefit to the people of the state; the activity is necessary to  
18 accommodate important economic or social development in the area; the highest statutory and  
19 regulatory requirements and best management practices for pollution control are achieved; and  
20 resulting water quality is adequate to protect and maintain existing beneficial uses. There is no such  
21 analysis in the EIR. There is no comprehensive analysis of why degradation of water quality is  
22 consistent with the maximum benefit to the people or evidence showing why diminished water quality  
23 is necessary to accommodate important economic or social development in the area. Nor is there any  
24 analysis of whether the highest statutory and regulatory requirements and best management practices  
25 for pollution control have been achieved and whether such requirements are likely to be successful in  
26 the future or that resulting water quality is adequate to protect and maintain beneficial uses, especially  
27 in the face of collapsing fishery populations. The EIR’s failure to conduct the required antidegradation  
28 analysis is inconsistent with CEQA’s analytical and disclosure requirements.

1           193. The EIR's analysis of electrical conductivity ("EC"), a measure of salinity, does not  
2 comply with CEQA's requirements. The diversion of millions of acre-feet of low EC water from the  
3 Sacramento River and corresponding increase in the percentage of high EC San Joaquin River water in  
4 the interior and southern Delta coupled with decreased dilution and increased residence time indicate  
5 that EC will likely increase throughout the Delta with operation of the Project. Nor does the EIR  
6 adequately survey, analyze or discuss the impacts of EC, modified hydrology and increased residence  
7 time on freshwater invertebrates (especially their egg and sensitive life stages) in the eastern and  
8 southern Delta and lower San Joaquin River. Zooplankton is a critical source of food for numerous  
9 fish species. Different zooplankton species tend to inhabit freshwater, low salinity zones or high  
10 salinity zones. Populations of native copepod and mysid species have plummeted by magnitude. The  
11 same concerns apply to the phytoplankton community. The EIR's failure to adequately analyze and  
12 discuss the potential impacts of increased and elevated concentrations of EC is inconsistent with  
13 CEQA's analytical and disclosure requirements.

14           194. DWR must be ordered to vacate its Project approval and EIR certification and prepare  
15 and circulate for public review and comment a new draft EIR including adequate water quality impact  
16 analysis.

### 17                                 **Findings Not Supported by Substantial Evidence**

18           195. CEQA requires that DWR adopt certain Findings in connection with their certification of  
19 the EIR and approval of the Project.

20           196. No substantial evidence supports DWR's Findings that no feasible alternatives or  
21 mitigation measures exist to eliminate or reduce the Project's unavoidable significant adverse  
22 environmental impacts.

23           197. No substantial evidence supports DWR's Findings that the Project's purportedly  
24 "unavoidable" environmental impacts are in fact unavoidable.

25           198. No substantial evidence supports DWR's Findings in support of the Statement of  
26 Overriding Considerations that the Project's purported benefits outweigh its unavoidable significant  
27 adverse environmental impacts.

28           199. No substantial evidence supports DWR's Findings that the Project is consistent with

1 applicable plans, policies, and other guidance.

2 200. No substantial evidence supports DWR’s Findings that construction and operations of  
3 the Project would not have significant and unavoidable adverse environmental impacts on water  
4 quality, public health, and fisheries including listed endangered and threatened fish species and their  
5 designated critical habitat.

6 **Inadequate Responses to Comments**

7 201. DWR failed to respond adequately to comments submitted by Petitioners, other  
8 members of the public, and other agencies. Instead, the responses given to numerous comments  
9 regarding the absence of the required range of reasonable alternatives, absence of CEQA analysis of  
10 the Project’s impacts on surface water and water supply, absence of CEQA analysis of the Project’s  
11 impacts coupled with worsening climate change, and the Project’s biological resources impacts, water  
12 quality impacts, water supply impacts, hydrological impacts, traffic impacts, cumulative impacts,  
13 growth inducing impacts, consistency with applicable plans and policies, public services, recreation,  
14 adequacy of mitigation measures, and alternatives are conclusory, evasive, confusing, or otherwise  
15 non-responsive, contrary to the requirements of CEQA. In addition, DWR failed to provide an  
16 adequate rationale for rejecting alternatives in its responses to comments.

17 202. As a result of the foregoing defects alleged in this cause of action, DWR prejudicially  
18 abused its discretion by certifying an EIR that does not comply with CEQA and by approving the  
19 project in reliance thereon. Accordingly, DWR’s certification of the EIR and approval of the project  
20 must be set aside.

21 **SECOND CAUSE OF ACTION**

22 **(Delta Reform Act, Water Code §§ 85000 *et seq.*, Gov. Code § 11342.2)**

23 203. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully  
24 set forth herein.

25 204. The Project is in conflict with the declared water policy of the State of California  
26 established by the Delta Reform Act including, but not limited to, the policy “to reduce reliance on the  
27 Delta in meeting California’s future water supply needs through a statewide strategy of investing in  
28 improved regional supplies, conservation, and water use efficiency ....” (Water Code § 85021.) The



1 Project would instead increase reliance on the Delta in meeting California’s future water supply needs  
2 by increasing the capacity to divert more water from the Delta than is presently being diverted.

3 205. The Project is in conflict with the declared policy of the State of California confirmed by  
4 the Delta Reform Act that “[t]he long-standing constitutional principle of reasonable use and the  
5 public trust doctrine shall be the foundation of state water management policy and are particularly  
6 important and applicable to the Delta.” (Water Code § 85023.) The Project would instead make  
7 maximizing exports the foundation of state water management policy applicable to the Delta.

8 206. The Project is in conflict with the law established by the Delta Reform Act that the  
9 “‘BDCP’ means a multi-species conservation plan.” (Water Code § 85053.) The Project as modified as  
10 approved is now simply a water diversion project and is not a multi-species conservation plan.

11 207. The Project is in conflict with the Delta Reform Act which mandates that:

12 “Coequal goals” means the two goals of providing a more reliable water supply for  
13 California and protecting, restoring, and enhancing the Delta ecosystem. The coequal  
14 goals shall be achieved in a manner that protects and enhances the unique cultural,  
recreational, natural resource, and agricultural values of the Delta as an evolving place.

15 (Water Code § 85054.)

16 208. The Project does not provide a more reliable water supply for California by determining  
17 actual water rights as opposed to “paper” water rights, and the operational requirements and flows  
18 necessary for recovering the Delta ecosystem in order to identify the remaining water available for  
19 export and other beneficial uses. The Project would further degrade instead of protecting, restoring,  
20 and enhancing the Delta ecosystem by taking away from the Delta substantial quantities of freshwater  
21 flows that presently flow through the Delta before being diverted at the south Delta.

22 209. The Project is in conflict with the Delta Reform Act which mandates that the BDCP  
23 could not be incorporated into the Delta Plan and could not be eligible for state funding unless among  
24 other things, the BDCP complies with CEQA, and includes “a comprehensive review and analysis of”  
25 (among the listed subjects):

26 • operational requirements and flows necessary for recovering the Delta ecosystem  
27 and restoring fisheries under a reasonable range of hydrologic conditions, which will  
28 identify the remaining water available for export and other beneficial uses. (Water Code §  
85320(b)(2)(A).)

• A reasonable range of Delta conveyance alternatives, including through-Delta, dual

1 conveyance, and isolated conveyance alternatives and including further capacity and design  
2 options of a lined canal, an unlined canal, and pipelines. (Water Code § 85320(b)(2)(B).)

3 • The potential effects of each Delta conveyance alternative on Delta water quality.  
4 (Water Code § 85320(b)(2)(G).)

5 The Project and the Project approval process have not determined the operational requirements  
6 and flows necessary to recover the Delta ecosystem in order to identify the remaining water available  
7 for export and other beneficial uses; have not developed a reasonable range of Delta conveyance  
8 alternatives including through-Delta; and have not determined the potential effects of through-Delta  
9 conveyance alternatives on Delta water quality.

10 210. The Project is in conflict with the Delta Reform Act which prohibits initiation of  
11 “construction of a new Delta conveyance facility” unless the exporter beneficiaries have made  
12 arrangements to pay for all costs including planning, design, construction, and mitigation. (Water  
13 Code § 85089.) Instead of the exporters paying for all costs, a substantial public subsidy would be  
14 necessary to make the Project, which is estimated to cost up to \$67 billion, a breakeven proposition for  
15 agricultural users of the water.

16 211. Petitioners seek declaratory relief pursuant to Code of Civil Procedure section 1060 and  
17 Government Code section 11350 as well as mandamus and injunctive relief determining that the  
18 approval of the Project was arbitrary and unreasonable under the Delta Reform Act, in conflict with  
19 the Delta Reform Act, and relief prohibiting initiation of construction of the Project.

### 20 **THIRD CAUSE OF ACTION**

#### 21 **(Violation of Fully Protected Bird Statute, Fish and Game Code § 3511)**

22 212. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully  
23 set forth herein.

24 213. Fish and Game Code section 3511 lists the avian species that are considered “fully  
25 protected.” Several such fully protected bird species, including the greater sandhill crane and white-  
26 tailed kite, occur in areas affected by the Project.

27 214. Except for limited exceptions not applicable here, “fully protected birds or parts thereof  
28 may not be taken or possessed at any time.” (Fish & G. Code, § 3511 (a)(1).) DWR’s approval of the  
Project is subject to this prohibition; DWR may not authorize the take of fully protected birds, and  
may not approve the Project if it will result in the take of fully protected birds.

1 DWR's authorization of the Project will result in the unauthorized and prohibited take of greater  
2 sandhill cranes and white-tailed kites through, among other things, collisions with transmission lines,  
3 noise and other harassing activities, and the destruction and modification of essential crane habitat  
4 associated with the construction and operation of the Project.

5 215. Measures proposed by DWR purporting to conserve greater sandhill cranes will likely  
6 not fully avoid take of cranes associated with the Project.

7 216. By authorizing the take of fully protected bird species, DWR failed to act in the manner  
8 required by law and prejudicially abused its discretion.

9 **FOURTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 217. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully  
12 set forth herein.

13 218. Petitioners contend that the approval of the project and certification of the EIR have  
14 been adopted in violation of CEQA, the Delta Reform Act, and the fully protected species statutes.  
15 DWR denies these contentions.

16 219. An actual controversy has arisen and now exists between the Petitioners and DWR  
17 regarding the respective rights and duties under CEQA, the Delta Reform Act, and the fully protected  
18 bird statutes.

19 220. Petitioners desire a judicial determination and declaration of the parties' respective  
20 rights and duties pursuant to Code of Civil Procedure section 1060, including a declaration of whether  
21 DWR failed to proceed in the manner required by CEQA when it certified the EIR and approved the  
22 project. Such a declaration is necessary and appropriate at this time.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioners pray for relief as follows:

- 25 1. For alternative and preemptory writs of mandate, commanding Respondent DWR to:
- 26 a. Vacate and set aside approval of the Project and findings supporting the approval;
- 27 b. Vacate and set aside certification of the EIR and Notice of Determination;
- 28 c. Suspend any and all activity that can result in an adverse change or alteration to the

1 physical environment, including but not limited to issuance of revenue bonds to pay for  
2 the Project, until Respondent has complied with all requirements of CEQA and all other  
3 applicable state and local laws and regulations as a directed by this Court pursuant to  
4 Public Resources Code section 21168.9;

5 2. For a stay, temporary restraining order, preliminary injunction, and permanent  
6 injunction prohibiting any actions by Respondent, including but not limited to issuance of  
7 revenue bonds to pay for the Project, pursuant to Respondent's approval of the Project and  
8 certification of the EIR until Respondent has fully complied with all requirements of CEQA, the  
9 Delta Reform Act, the fully protected species statutes, and all other applicable state laws,  
10 policies, and regulations;

11 3. For a declaration that the project and certification of the EIR are inconsistent with the  
12 CEQA, the Delta Reform Act, and the fully protected species statutes;

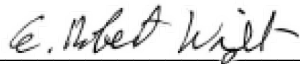
13 4. For costs of suit;

14 5. For attorney's fees pursuant to law including Code of Civil Procedure section 1021.5;  
15 and

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

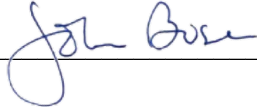
17 DATED: January 19, 2024

E. Robert Wright  
SIERRA CLUB CALIFORNIA

19  
20 By: 

21 E. Robert Wright  
22 Attorney for Petitioners and Plaintiffs *Sierra Club,*  
23 *Friends of the River, California Water Impact Network,*  
24 *Planning and Conservation League, AquAlliance, Pacific*  
*Coast Federation of Fishermen's Associations, Institute*  
*for Fisheries Resources, and California Sportfishing*  
*Protection Alliance*


25 John Buse  
26 CENTER FOR BIOLOGICAL DIVERSITY

27  
28 By: 

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John Buse  
Attorney for Petitioners and Plaintiffs *Center for Biological  
Diversity, North Coast Rivers Alliance, Friends of Stone  
Lakes National Wildlife Refuge, Save Our Sandhill Cranes,  
Environmental Council of Sacramento, and Sacramento  
Audubon Society*

Adam Keats

By: 

Adam Keats  
Attorney for Petitioners and Plaintiffs *California Water  
Impact Network, Planning and Conservation League,  
AquAlliance, and California Sportfishing Protection  
Alliance*

1 Verification

2 I, Adam Keats, am counsel of record for Petitioners and Plaintiffs' California Water Impact  
3 Network, Planning and Conservation League, AquAlliance, and California Sportfishing Protection  
4 Alliance. I am signing this verification due to Petitioners' absence from the County of San Francisco,  
5 and because facts in the petition are within my knowledge.

6 I have read the foregoing Petition and Complaint and know the contents thereof. The same is true  
7 of my own knowledge, except as to those matter that are alleged on information and belief, and as to  
8 those matters, I believe them to be true.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
10 true and correct.

11 Executed this 19th day of January, 2024, in San Francisco, California.

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13 \_\_\_\_\_  
14 Adam Keats  
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# **Exhibit A**



January 18, 2024

California Dept. of Water Resources  
715 P Street  
Sacramento, CA 95814

**Re: Notice of Commencement of Legal Action Pursuant to the California Environmental Quality Act**

Dear California Department of Water Resources,

Sierra Club, Center for Biological Diversity, Friends of the River, Planning and Conservation League, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, California Sportfishing Protection Alliance, California Water Impact Network, AquAlliance, North Coast Rivers Alliance, Friends of Stone Lakes National Wildlife Refuge, Save Our Sandhill Cranes, Environmental Center of Sacramento, and Sacramento Audubon Society ("Petitioners") intend to commence an action for writ of mandate to vacate and set aside the decision of the California Department of Water Resources ("Respondent") of its approval of the Delta Conveyance Project (or the "Project"), the Findings and Statement of Overwriting Considerations for the Project and the December 21, 2023 certification of the Final Environmental Impact Report ("EIR") for the Project, and to revise its findings to conform with the law. Petitioners submit this notice pursuant to Public Resources Code section 21167.5.

The action will commence on or after January 19, 2024 and will be based upon Respondent's failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*), among other claims.

Sincerely,

John Buse  
Senior Counsel  
Center for Biological Diversity



1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

3 I am employed in Oakland, California. I am over the age of 18 and not a party to the foregoing  
4 action. My business address is Center for Biological Diversity, 1212 Broadway, Suite 800,  
5 Oakland, California 94612. My email address is [trettinghouse@biologicaldiversity.org](mailto:trettinghouse@biologicaldiversity.org).


6 On January 19, 2024, I served a true and correct copy of the following document(s):

7 **Notice of Commencement of Legal Action Pursuant to CEQA**

8 [X] BY FIRST CLASS U.S. MAIL: By placing a true and correct copy thereof in sealed  
9 envelope(s). Such envelope(s) were addressed as shown below. Such envelope(s) were  
10 deposited for collection and mailing following ordinary business practices with which I am  
11 readily familiar.

12  
13 [x] STATE: I declare under penalty of perjury under the law of California that the foregoing  
14 is true and correct.

15 Executed on January 19, 2024 at Alameda, California.

16   
17 Theresa Rettinghouse

# **EXHIBIT B**

1 E. Robert Wright (SBN 51861)  
2 FRIENDS OF THE RIVER  
3 1418 20th Street, Suite 100  
4 Sacramento, CA 95811  
5 Tel: (916) 442-3155  
6 Fax: (916) 442-3396  
7 Email: bwright@friendsoftheriver.org

8 *Attorney for Petitioners and Plaintiffs Sierra Club, Friends*  
9 *of the River, California Water Impact Network, Planning*  
10 *and Conservation League, AquAlliance, Pacific Coast*  
11 *Federation of Fishermen’s Associations, Institute for*  
12 *Fisheries Resources, and California Sportfishing*  
13 *Protection Alliance*

14 *(additional counsel on following page)*

15 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **IN AND FOR THE COUNTY OF SACRAMENTO**

17 Sierra Club; Center for Biological Diversity;  
18 Friends of the River; California Water Impact  
19 Network; Planning and Conservation League;  
20 AquAlliance; Pacific Coast Federation of  
21 Fishermen’s Associations; Institute for Fisheries  
22 Resources; California Sportfishing Protection  
23 Alliance; North Coast Rivers Alliance; Friends of  
24 Stone Lakes National Wildlife Refuge; Save Our  
25 Sandhill Cranes; Environmental Council of  
26 Sacramento; and Sacramento Audubon Society,

27 **Petitioners and Plaintiffs,**

28 **vs.**

California Department of Water Resources; and  
DOES 1-20,

**Respondents and Defendants;**

DOES 21-50,

**Real Parties in Interest.**

Case No.

**PETITIONERS’ NOTICE OF ELECTION  
TO PREPARE ADMINISTRATIVE  
RECORD**

[Pub Res. Code § 21167.6]

Action Filed: January 19, 2024

1 ***Additional counsel:***

2 John Buse (SBN 163156)  
3 Frances Tinney (SBN 346927)  
4 CENTER FOR BIOLOGICAL DIVERSITY  
5 1212 Broadway, Suite 800, Oakland, CA 94612  
6 Tel: (510) 844-7100  
7 Fax: (510) 844-7150  
8 Email: [jbuse@biologicaldiversity.org](mailto:jbuse@biologicaldiversity.org)  
9 [ftinney@biologicaldiversity.org](mailto:ftinney@biologicaldiversity.org)

10 *Attorneys for Petitioners and Plaintiffs Center for  
11 Biological Diversity, Friends of Stone Lakes National  
12 Wildlife Refuge, Save Our Sandhill Cranes, Environmental  
13 Council of Sacramento, North Coast Rivers Alliance, and  
14 Sacramento Audubon Society*

15 Adam Keats (SBN 191157)  
16 LAW OFFICE OF ADAM KEATS, PC  
17 303 Sacramento Street, 2nd Floor  
18 San Francisco, CA 94111  
19 Tel: (415) 964-0070  
20 Email: [adam@keatslaw.org](mailto:adam@keatslaw.org)

21 *Attorney for Petitioners and Plaintiffs California Water  
22 Impact Network, Planning and Conservation League,  
23 AquAlliance, and California Sportfishing Protection  
24 Alliance*

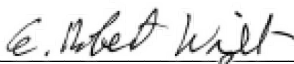
1 TO RESPONDENT CALIFORNIA DEPARTMENT OF WATER RESOURCES:

2 Petitioners and Plaintiffs Sierra Club; Center for Biological Diversity; Friends of the River;  
3 California Water Impact Network; Planning and Conservation League; AquAlliance; Pacific Coast  
4 Federation of Fishermen’s Associations; Institute for Fisheries Resources; California Sportfishing  
5 Protection Alliance; North Coast Rivers Alliance; Friends of Stone Lakes National Wildlife Refuge;  
6 Save Our Sandhill Cranes; Environmental Council of Sacramento; and Sacramento Audubon Society  
7 elect to prepare the record of proceedings in the above-captioned proceeding pursuant to Public  
8 Resources Code section 21167.6(b)(2).

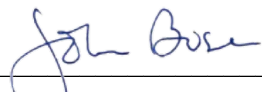
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13 DATED: January 19, 2024

E. Robert Wright  
SIERRA CLUB CALIFORNIA

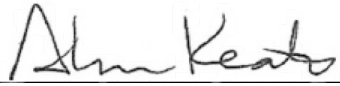
16 By:   
17 E. Robert Wright  
18 Attorney for Petitioners and Plaintiffs *Sierra Club,*  
19 *Friends of the River, California Water Impact Network,*  
20 *Planning and Conservation League, AquAlliance, Pacific*  
21 *Coast Federation of Fishermen’s Associations, Institute*  
22 *for Fisheries Resources, and California Sportfishing*  
23 *Protection Alliance*

24 John Buse  
25 CENTER FOR BIOLOGICAL DIVERSITY

26 By:   
27 John Buse  
28 Attorney for Petitioners and Plaintiffs *Center for Biological*  
*Diversity, North Coast Rivers Alliance, Friends of Stone*  
*Lakes National Wildlife Refuge, Save Our Sandhill Cranes,*  
*Environmental Council of Sacramento, and Sacramento*  
*Audubon Society*

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Adam Keats

By:   
Adam Keats

Attorney for Petitioners and Plaintiffs *California Water  
Impact Network, Planning and Conservation League,  
AquAlliance, and California Sportfishing Protection  
Alliance*