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34-2019-80003057

6 Attorneys for Plaintiffs and Petitioners
NORTH COAST RIVERS ALLIANCE, INSTITUTE FOR
7 FISHERIES RESOURCES, PACIFIC COAST FEDERATION
OF FISHERMEN'S ASSOCIATIONS, SAN FRANCISCO
8 CRAB BOAT OWNERS ASSOCIATION, and the WINNEMEM
WINTU TRIBE

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 NORTH COAST RIVERS ALLIANCE,)
INSTITUTE FOR FISHERIES RESOURCES,)
13 PACIFIC COAST FEDERATION OF)
FISHERMEN'S ASSOCIATIONS, SAN)
14 FRANCISCO CRAB BOAT OWNERS)
ASSOCIATION, and the WINNEMEM WINTU)
15 TRIBE,)

Civ. No.
**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND FOR ATTORNEYS' FEES**

16 Petitioners and Plaintiffs,)

CEQA CASE
FILED BY FACSIMILE

17 v.)

18 DEPARTMENT OF WATER RESOURCES,
and DOES 1 through 20,)

19 Respondents and Defendants,)

20 THE UNITED STATES BUREAU OF
21 RECLAMATION, and DOES 21 through 200,)

22 Real Parties in Interest.)
23

24 Petitioners and Plaintiffs NORTH COAST RIVERS ALLIANCE, INSTITUTE FOR FISHERIES
25 RESOURCES, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, SAN
26 FRANCISCO CRAB BOAT OWNERS ASSOCIATION, and the WINNEMEM WINTU TRIBE
27 (collectively "Conservation Groups") hereby petition the Court for a writ of mandate against defendant
28 and respondent Department of Water Resources ("DWR") and by this Verified Petition for Writ of

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by RiverCityProcessService.com

1 Mandate and Complaint for Declaratory and Injunctive Relief and for Attorney’s Fees (“Verified
2 Petition”) hereby allege as follows:

3 **INTRODUCTION**

4 1. This is a public interest citizen suit to enforce the California Environmental Quality Act
5 (“CEQA”), Public Resources Code (“PRC”) section 21000 et seq. (“CEQA”), the Delta Reform Act
6 (“DRA”), Water Code section 85000, et seq., and the Public Trust Doctrine. Petitioners bring this action
7 to challenge DWR’s December 12, 2018, entry into (1) an Addendum to the Agreement Between the
8 United States of America and the Department of Water Resources of the State of California for
9 Coordinated Operation of the Central Valley Project and the State Water Project (“COA Addendum
10 Project”), and (2) an Agreement to address the Effects of the California WaterFix on Central Valley
11 Project Operations by and between the United States Bureau of Reclamation and the California
12 Department of Water Resources (“Hold Harmless Agreement” and collectively with the COA
13 Addendum Project, the “Project”). In taking these actions DWR violated CEQA, the Delta Reform Act,
14 and the Public Trust Doctrine.

15 2. The COA Addendum Project alters the operational parameters of the State Water Project
16 (“SWP”) and Central Valley Project (“CVP”), assigning additional responsibilities to the SWP to
17 address water quality and flow requirements that apply to the operation of the SWP and CVP.

18 3. The Hold Harmless Agreement assigns responsibility to the SWP to mitigate, avoid, or
19 offset impacts from the California WaterFix on any resulting reduction in CVP water supplies.

20 4. CEQA is California’s preeminent environmental law. It requires all public agencies to
21 examine the potential adverse impacts of their actions before taking them. It is designed to protect
22 California’s extraordinary environmental resources from uninformed and needlessly destructive agency
23 actions. CEQA requires DWR to fully examine the impacts of its actions and to carefully consider
24 alternatives that would reduce those impacts.

25 5. Contrary to CEQA, DWR relied upon inapplicable CEQA exemptions to avoid conducting
26 any environmental review of the COA Addendum Project. Its December 14, 2018, Notice of Exemption
27 for the COA Addendum Project cites PRC section 21169 and 14 C.C.R. (CEQA Guidelines
28 [“Guidelines”]) § 15261(a) as the basis for its claimed exemption.

1 for recreational, aesthetic, scientific study, and related non-consumptive uses. The interests of North
2 Coast Rivers and its members have been, are being, and unless the relief requested herein is granted, will
3 be adversely affected and injured by DWR's certification of its inadequate FEIR and approval of the
4 Project.

5 13. Petitioner INSTITUTE FOR FISHERIES RESOURCES ("IFR") is a non-profit, tax-exempt
6 organization that works to protect and restore salmon and other fish populations and the communities
7 that depend on them. IFR maintains its principal place of business in San Francisco, California. IFR
8 both funds and manages many fish habitat protection programs and initiatives. In that capacity, IFR
9 seeks reforms to protect fish health and habitat throughout the West Coast of the United States and has
10 successfully advocated for dam removals, improved pesticide controls, better forestry stream protection
11 standards, and enhanced marine and watershed conservation regulations throughout the West Coast. IFR
12 has worked tirelessly for years to restore and enhance the Delta and its beleaguered fish and wildlife.
13 IFR and its members will be directly and indirectly injured by DWR's Project approval and its failure to
14 adequately protect and restore the imperiled fisheries of the Delta.

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

26 15. Petitioner SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION ("San Francisco
27 Fishermen") is a century-old association of owners and operators of small, family owned fishing boats
28 that catch Dungeness crab, wild California King salmon, Pacific herring, and other species that live in

1 and depend upon the cold waters of the Pacific Ocean, and San Francisco Bay-Delta and the Sacramento
2 and San Joaquin Rivers and their tributaries. San Francisco Fishermen is also actively involved in
3 community education and advocacy concerning fisheries resources legislation to ensure that the rich
4 heritage of commercial fishing in the Bay Area will survive for future generations. San Francisco
5 Fishermen and its members will be harmed by the DWR's Project approval because it would threaten
6 their continued historic use and enjoyment of the fisheries resources of the Delta and its connected
7 ecosystems.

8 16. Petitioner WINNEMEM WINTU TRIBE is a Native American Tribe whose aboriginal
9 territory encompasses the upper watersheds of the Sacramento River including the McCloud River. The
10 Winnemem Wintu Tribe was traditionally dependent on salmon fishing for both subsistence and cultural
11 purposes, and maintains a deep cultural, spiritual and recreational interest in the continued viability of
12 California's salmon runs that pass through the Sacramento-San Joaquin River Delta ("Delta"). The
13 Winnemem Wintu Tribe is a strong proponent of Delta restoration, and will be harmed by the reduced
14 Delta fresh water flows, degradation of water quality, destruction of fish and wildlife species, and other
15 environmental harms that implementation of the Project will allow.

16 17. Respondent and defendant CALIFORNIA DEPARTMENT OF WATER RESOURCES
17 ("DWR") is a California public agency established by the Legislature and charged with management of
18 the State Water Project and other water management tasks. Its certification of the FEIR on November
19 13, 2018, and approval of the Project on December 11, 2018, was subject to and violated the
20 requirements of CEQA, the Delta Reform Act, and the Public Trust Doctrine. DWR is the lead agency
21 under CEQA for environmental review of the Project.

22 18. The true names and capacities of respondents DOES 1-20, inclusive, are unknown to
23 petitioners who therefore sue such respondents by fictitious names pursuant to CCP section 474.
24 Petitioners are informed and believe, and based on such information and belief allege, that the
25 fictitiously named respondents are state or local officials or agencies who are responsible, in whole or in
26 part, for the approval and implementation of the Project. Petitioners will, with leave of Court if
27 necessary, amend this Verified Petition if and when the true names and capacities of said Doe
28 respondents have been ascertained.

1 of applicable laws and must therefore vacate and set aside its approvals. Petitioners are informed and
2 believe that DWR disputes this contention. A judicial resolution of this controversy is therefore
3 necessary and appropriate.

4 25. Petitioners are also entitled to injunctive relief under CCP section 526 because approval of
5 the COA Addendum Project and Hold Harmless Agreement threatens irreparable environmental harm.
6 Unless enjoined, DWR will implement these approvals despite its lack of compliance with applicable
7 laws, causing undue and unnecessary environmental degradation. Petitioners would thereby suffer
8 irreparable harm due to DWR's failure to take the required steps to adequately protect the environment.
9 Injunctive relief is thus warranted under CCP section 525 *et seq.* and PRC section 21168.9 to prevent
10 irreparable harm to the environment.

11 LEGAL BACKGROUND

12 CEQA

13 26. CEQA is California's primary statutory mandate for environmental protection. It applies to
14 all state and local agencies, and requires them to "first identify the [significant] environmental effects of
15 projects, and then to mitigate those adverse effects through the imposition of feasible mitigation
16 measures or through the selection of feasible alternatives." *Sierra Club v. State Board of Forestry*
17 (1994) 7 Cal.4th 1215, 1233. Its most important substantive imperative requires "public agencies to
18 deny approval of a project with significant adverse effects when feasible alternatives or feasible
19 mitigation measures can substantially lessen such effects." *Sierra Club v. Gilroy City Council* (1990)
20 222 Cal.App.3d 30, 41.

21 27. CEQA's mandate for detailed environmental review "ensures that members of the
22 [governmental decision-making body] will fully consider the information necessary to render decisions
23 that intelligently take into account the environmental consequences" of their proposed action. *Mountain*
24 *Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 133; PRC §§ 21080.5(d)(2)(D),
25 21091(d)(2); Guidelines § 15088. The CEQA process thus "protects not only the environment but also
26 informed self-government." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553,
27 564.

28 28. All California "public agencies" must comply with CEQA when they approve discretionary

1 projects. PRC § 21080(a). DWR is a “public agency” and a “state agency” as defined in CEQA. PRC §
2 21063. Therefore, DWR’s discretionary approvals are subject to CEQA.

3 29. A proposed governmental action requires environmental review under CEQA if (1) the
4 agency is contemplating an “approval” of an action as defined by Guidelines section 15352, (2) the
5 subject matter of the contemplated approval constitutes a “project” under PRC section 21065 and
6 Guidelines section 15378(a), and (3) the project to be approved does not fall within a statutory
7 exemption created by the Legislature under PRC section 21080(b) and recognized under CEQA
8 Guidelines sections 15260-15285, or a categorical exemption in the Guidelines as promulgated by the
9 California Resources Agency pursuant to PRC section 21084(a) and Guidelines sections 15061(b)(2),
10 15300-15333 and 15354.

11 30. The lead agency must prepare an environmental impact report (“EIR”) if it determines that a
12 project may have significant adverse environmental impacts. The EIR must analyze those effects and
13 suggest feasible means, if any, of mitigating or avoiding them including alternatives that would achieve
14 most of the basic objectives of the project without causing significant environmental effects. PRC §§
15 21002, 21002.1, 21061; Guidelines §§ 15080-15096, 15120-15132, 15160-15170.

16 31. In applying these CEQA procedures, an agency may not segment a project to avoid
17 preparing an EIR on the entirety, or whole, of the project. Guidelines § 15378(a), (c), (d). CEQA’s
18 “requirements cannot be avoided by chopping up proposed projects into bite-size pieces which,
19 individually considered, might be found to have no significant effect on the environment or to be only
20 ministerial.” *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726.

21 **The Delta Reform Act**

22 32. To address the indisputably perilous state of the Delta, in 2009 the California Legislature
23 enacted the Delta Reform Act, declaring that “[t]he Sacramento-San Joaquin Delta watershed and
24 California’s water infrastructure are in crisis and *existing Delta policies are not sustainable.*” Water
25 Code § 85001(a), emphasis added. The Legislature found that “‘the Delta’ . . . is a critically important
26 natural resource for California and the nation. It serves Californians concurrently as both the hub of the
27 California water system and the most valuable estuary and wetland ecosystem on the west coast of North
28 and South America.” Water Code § 85002. “Resolving the crisis requires *fundamental reorganization*

1 of the state’s management of Delta watershed resources.” Water Code § 85001(a), emphasis added.
2 Therefore, the Legislature resolved “to provide for the sustainable management of the [Delta] ecosystem,
3 to provide for a more reliable water supply for the state, to protect and enhance the quality of water
4 supply from the Delta, and to establish a governance structure that will direct efforts *across state*
5 *agencies* to develop a *legally enforceable* Delta Plan.” Water Code § 85001(c), emphasis added.

6 33. The Delta Reform Act was meant to advance the “coequal goals” of restoring the Delta
7 ecosystem and ensuring water supply reliability. Water Code § 85054. The Legislature found that eight
8 “objectives” were inherent in those coequal goals:

- 9 (a) *Manage the Delta’s water and environmental resources and the water resources of the state*
10 *over the long term.*
- 11 (b) *Protect and enhance the unique cultural, recreational, and agricultural values of the*
12 *California Delta as an evolving place.*
- 13 (c) *Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy*
14 *estuary and wetland ecosystem.*
- 15 (d) Promote statewide water conservation, water use efficiency, and *sustainable water use.*
- 16 (e) Improve water quality to protect human health and the environment consistent with
17 *achieving water quality objectives in the Delta.*
- 18 (f) Improve the water conveyance system and expand statewide water storage.
- 19 (g) Reduce risks to people, property, and state interests in the Delta by effective emergency
20 preparedness, appropriate land uses, and investments in flood protection.
- 21 (h) Establish a new governance structure with the authority, responsibility, accountability,
22 scientific support, and adequate and secure funding to achieve these objectives.

23 Water Code § 85020, emphasis added.

24 34. The Legislature also declared that:

25 The policy of the State of California is to *reduce reliance on the Delta in meeting*
26 *California’s future water supply needs* through a statewide strategy of investing in
27 improved regional supplies, conservation, and water use efficiency. Each region that
28 depends on water from the Delta watershed shall improve its regional self-reliance for
water through investment in water use efficiency, water recycling, advanced water
technologies, local and regional water supply projects, and improved regional
coordination of local and regional water supply efforts.

Water Code § 85021, emphasis added.

The Public Trust Doctrine

35. Water Code section 85023 states, “the longstanding constitutional principle of reasonable

1 use and the Public Trust Doctrine shall be the foundation of state water management policy and are
2 particularly important and applicable to the Delta.”

3 36. In *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426, the court noted
4 that the public trust doctrine mandates that “before state courts and agencies approve water diversions
5 they . . . consider the effect of such diversions upon interests protected by the public trust, and attempt,
6 so far as feasible, to avoid or minimize any harm to those interests.” The *National Audubon Society*
7 Court went on to explain:

8 Just as the history of this state shows that appropriation may be necessary for efficient use of
9 water despite unavoidable harm to public trust values, it demonstrates that an appropriative
10 water rights system administered without consideration of the public trust may cause
11 unnecessary and unjustified harm to trust interests. As a matter of practical necessity the state
12 may have to approve appropriations despite foreseeable harm to public trust uses. In so
13 doing, however, the state must bear in mind its duty as trustee to consider the effect of the
14 taking on the public trust, and to preserve, so far as consistent with the public interest, the
15 uses protected by the trust.

16 *Id.*, citations omitted.

17 37. “Public trust easements are traditionally defined in terms of navigation, commerce and
18 fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and
19 general recreation purposes the navigable waters of the state, and to use the bottom of the navigable
20 waters for anchoring, standing, or other purposes.” *Marks v. Whitney* (1971) 6 Cal.3d 251, 259. For
21 nearly 50 years it has been settled law in California that public trust values also “encompass[] . . . the
22 preservation of those lands in their natural state, so that they may serve as ecological units for scientific
23 study, as open space, and as environments which provide food and habitat for birds and marine life, and
24 which favorably affect the scenery and climate of the area.”

25 38. Although compliance with CEQA “may assist an agency in complying with its duties under
26 the public trust doctrine [.] CEQA review of a project does not necessarily or automatically satisfy
27 the agency’s affirmative duties to take the trust into account and protect public trust uses whenever
28 feasible.” *San Francisco Baykeeper Inc. v. State Lands Com.* (2018) 29 Cal.App.5th 562, 571. “[A]
public trust use is not any use that may confer a public benefit, but rather a use that facilitates public
access, public enjoyment, or public use of trust land.” *Id.* at 570.

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1 **FACTUAL BACKGROUND**

2 39. “[T]he Sacramento-San Joaquin River Delta is a natural resource of statewide, national, and
3 international significance, containing irreplaceable resources.” PRC § 29701. The Delta is the largest
4 and most productive estuarine system on the West Coast of North and South America, but its future is in
5 peril. It is the State of California’s avowed policy “to recognize, preserve, and protect those resources of
6 the delta for the use and enjoyment of current and future generations.” *Id.*

7 40. In July 1985 DWR and the Bureau circulated a Draft Joint Environmental Impact Statement
8 and Environmental Impact Report for the Coordinated Operation Agreement (“COA Draft EIS/R”).
9 That environmental review examined a proposed action, with a sharing formula that allocated to the
10 CVP 75 percent – and to the SWP 25 percent – of the responsibility for meeting in-basin uses from
11 stored water releases. Under the proposed action, the CVP was assigned 55 percent – and the SWP 45
12 percent – of the responsibility for capturing “excess flow.” COA Draft EIS/R, p. S-2. The COA Draft
13 EIS/R discussed the proposed action, the no action alternative, potential modifications to the agreement
14 – including changed sharing formulas and additional explicit environmental protections, and no
15 coordination at all.

16 41. In comments on the COA Draft EIS/R, the National Marine Fisheries Service (“NMFS”)
17 highlighted the detrimental impacts that the proposed action would have on salmon spawning and
18 rearing in the upper Sacramento River. NMFS also raised the concern that State Water Resources
19 Control Board’s Delta water quality standards contained in Decision 1485 (“D-1485”) were not
20 adequately protective for fish under the proposed action because it could increase entrainment and loss of
21 juvenile salmon without providing sufficient positive downstream flow to transport outmigrant salmon
22 past pumps and through the Delta.

23 42. In April 1986 DWR and the Bureau issued a Final Joint Environmental Impact Statement
24 and Environmental Impact Report for the Proposed Agreement between the United States of America
25 and the Department of Water Resources of the State of California for Coordinated Operation of the
26 Central Valley Project and State Water Project (“COA Final EIS/R”).

27 43. In November 1986, DWR and the Bureau entered into the COA. The COA, as adopted,
28 incorporated water quality standards for the Sacramento-San Joaquin Delta that were extracted from

1 D-1485, replacing the Bureau of Reclamation’s prior Tracy water quality standards.

2 44. In 1992 Congress enacted the Central Valley Project Improvement Act, Public Law No.
3 102-575, 108 Stat. 4600 (“CVPIA”), to reduce the adverse environmental impacts of CVP operations.
4 CVPIA §§ 3402(a)-(b), 3406(b). In order “[t]o address impacts of the Central Valley Project on fish,
5 wildlife and associated habitat,” the CVPIA requires the Bureau to undertake environmental review
6 before any long-term water service contract can be renewed by the Bureau. CVPIA §§ 3402(a),
7 3404(c)(1). The CVPIA altered the parameters of CVP operations.

8 45. After the 1986 COA, the State Water Resources Control Board has revised and updated
9 water quality objectives and standards, and set flow requirements that differ from those included in the
10 COA.

11 46. The Delta’s imminent ecologic collapse is well-recognized and indisputable. It has two
12 principal causes. First, an unsustainable proportion of the Delta’s freshwater flows has been diverted for
13 decades by the Central Valley Project (“CVP”) and the California (or “State”) Water Project (“SWP”).
14 Second, for too long, agricultural diverters have discharged subsurface drainage and surface run-off
15 contaminated with salt, selenium, and other toxic substances into groundwater and the rivers that are
16 tributary to the Delta. This one-two punch of diminished freshwater flows and increased temperature,
17 salinity, herbicides, pesticides, and heavy metals has pushed the Delta to the brink of ecologic collapse.

18 47. Due to excessive diversions of water for consumptive use, many species of fish endemic to
19 the Delta have already gone extinct, including the Sacramento perch, formerly one of the most abundant
20 fishes of the Delta, which disappeared in the 1970s. Just 12 indigenous species remain, and these are in
21 grave danger. Since the SWP and CVP began operation, the Sacramento River winter and spring run
22 Chinook salmon, Central Valley steelhead, North American green sturgeon and Delta smelt have been
23 driven perilously close to extirpation.

24 48. Winter run Chinook salmon were declared threatened under the federal Endangered
25 Species Act (“ESA”) in 1990 (55 Fed.Reg. 46515), and then due to continuing population declines,
26 declared endangered in 2005 (70 Fed.Reg. 37160). Their critical habitat in the Sacramento River and its
27 tributaries was designated in 1993. 58 Fed.Reg. 33212. Spring run Chinook salmon were declared
28 threatened, and their critical habitat designated under the ESA in 2005. 70 Fed.Reg. 37160, 52488.

1 Central Valley steelhead were declared threatened in 2000 (65 Fed.Reg. 52084) and their critical habitat
2 was designated in 2005 (70 Fed.Reg. 52488). The Southern distinct population segment (“DPS”) of
3 North American green sturgeon was declared threatened in 2006 (71 Fed.Reg. 17757) and its critical
4 habitat was designated in 2008 (73 Fed.Reg. 2084). Delta smelt were declared endangered in 1993 (58
5 Fed.Reg. 12854) and their critical habitat was designated in 1994 (59 Fed.Reg. 65256).

6 49. The SWP, as originally envisioned, would have included additional dams and diversions
7 that would have destroyed the free-flowing rivers of California’s North Coast and removed additional
8 essential spawning and rearing habitat for salmon and steelhead. The unbuilt portion of the SWP was
9 expected to provide between five and 10 million acre feet of water each year to the SWP system. Thus,
10 DWR’s SWP existing contracts contemplate delivery of much more water than can be delivered in all
11 but the wettest of water years.

12 50. In addition to harming many fish species in the Delta, the excessive use of Delta water
13 exports to irrigate contaminated soils in the San Joaquin Valley pollutes ground and surface waters that
14 flow into the Delta. Irrigation leaches pollutants from the toxic soils underlying many of the areas
15 irrigated with Delta water. The subsurface drainage and surface run off from these contaminated soils
16 contain pollutants including selenium, arsenic, boron, mercury, uranium, chromium, molybdenum and
17 sodium chlorides and sulfates. The resulting pollution of the Delta and its San Joaquin Valley tributaries
18 threatens the Delta’s water quality and the fish and wildlife dependent on them.

19 51. In June 2009, NMFS issued a Biological Opinion (“2009 NMFS BiOp”) that warned
20 Reclamation that

21 the long-term operations of the CVP and SWP are likely to jeopardize the continued
22 existence of Sacramento River winter-run Chinook Salmon, Central Valley spring-run
23 Chinook salmon, Central Valley steelhead, Southern DPS of North American green
24 sturgeon, and Southern Resident Killer whales. The long-term operations of the CVP and
25 SWP are likely to destroy or adversely modify critical habitat for Sacramento River
26 winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central
27 Valley steelhead.

28 NMFS also warned that the “long-term operations of the CVP and SWP are likely to destroy or adversely
29 modify proposed critical habitat for the Southern DPS of North American green sturgeon.” *Id.*

30 52. The U.S. Fish and Wildlife Service (“FWS”) found in its December 2008 Biological
31 Opinion (“2008 FWS BiOp”) that “the coordinated operations of the CVP and SWP, as proposed, are

1 likely to jeopardize the continued existence of the delta smelt.”

2 53. The 2009 NMFS BiOp makes clear that as much as 60 percent of the natural historical
3 inflow to Central Valley watersheds and the Delta has been diverted for human uses. Depleted flows
4 have contributed to higher temperatures, lower dissolved oxygen . . . levels, and decreased recruitment of
5 gravel and large woody debris.”

6 54. NMFS has found that “[w]ater withdrawals, for agricultural and municipal purposes, have
7 reduced river flows and increased temperatures during the critical summer months, and in some cases,
8 have been of a sufficient magnitude to reverse flows in the lower San Joaquin River. . . Direct
9 relationships exist between water temperature, water flow, and juvenile salmonid survival.”

10 55. In 2017 DWR approved the WaterFix Project, which is intended to divert massive amounts
11 of water through three intakes and into two tunnels, where the water would bypass the Delta and arrive
12 near the pumps south of the Delta for delivery to water users. While both DWR and the Bureau studied
13 the WaterFix, only DWR has approved it. DWR and the Bureau have applied to the State Water
14 Resources Control Board for a change in point of diversion for their water rights in order to implement
15 the WaterFix. SWP contractors have signaled their interest in funding portions of the WaterFix;
16 however, most CVP contractors have not voted to participate in it. The WaterFix has been marketed as a
17 way for water users to receive increased and more reliable water deliveries; however, its reductions in
18 freshwater flows in the Delta, the Sacramento River, and their associated sloughs would adversely
19 modify designated critical habitat for at least five endangered and threatened species: the Sacramento
20 River winter-run Chinook salmon, the Central Valley spring-run Chinook Salmon, Central Valley
21 steelhead, the southern distinct population segment of North American green sturgeon, and the Delta
22 smelt, among other impacts.

23 56. DWR’s certification of the WaterFix Final Environmental Impact Report and approval of
24 the WaterFix has been challenged by almost twenty separate CEQA petitions, including by petitioners,
25 which have been coordinated with DWR’s validation case, among others. These matters are pending in
26 Sacramento Superior Court, Judicial Council Coordinated Proceeding number 4942.

27 57. In preparation of its entry into the COA Addendum, the Bureau prepared an Environmental
28 Assessment (“COA Addendum EA”). The Bureau consulted with DWR in preparing the COA

1 Addendum EA. The COA Addendum EA indicates that the Project would alter water temperature on the
2 Sacramento River during critical water year types. While the EA does disclose this fact directly, the
3 modeling included in EA Appendix A shows that river water temperatures under the Project could
4 increase compared to the no-action alternative in several months, and under critical and dry water year
5 types. COA Addendum EA, Appendix A, pp. 4–6. Further, the COA Addendum EA discloses that these
6 increased temperatures could increase salmonid egg mortality. *Id.* at Appendix A, p. 8.

7 58. The COA Addendum EA also discloses that the COA Addendum Project would cause
8 “changes in reservoir elevations, reservoir releases, and water supply delivery both North and South of
9 the Delta that may affect water supply.”

10 59. The COA Addendum EA does not address the cumulative impacts of the COA Addendum
11 Project when examined with the WaterFix, or with the Hold Harmless Agreement.

12 60. Petitioners are informed and believe that the COA Addendum Project will negatively impact
13 SWP carryover storage during multiple critical water years, and that this negative impact will preclude
14 the release of necessary cool water flows to protect fish survival, including that of listed species.

15 61. The COA Addendum Project will “adjust current SWP operations to modify pumping
16 operations, as well as [SWP] storage withdrawals to meet in-basin uses pursuant to revised calculations
17 based on water year types.” COA Addendum Project Notice of Exemption, Attachment, p. 1.

18 62. The COA Addendum Project would alter DWR’s and the Bureau’s “responsibility for
19 making available storage withdrawals to meet Sacramento Valley inbasin use of storage.” COA
20 Addendum, p. 2. Under the COA Addendum Project this responsibility is allocated between the Bureau
21 and DWR as follows:

22 a. In wet and above normal years, the Bureau’s share of responsibility is 80 percent and
23 DWR’s responsibility is 20 percent.

24 b. In below normal years, the responsibility remains as stated in the 1986 COA, with
25 the Bureau responsible for 75 percent and DWR responsible for 25 percent.

26 c. In dry years, DWR’s responsibility for making available storage withdrawals will
27 increase to 35 percent and the Bureau’s responsibility will decrease to 65 percent.

28 d. In critical years, DWR’s responsibility will increase to 40 percent and the Bureau’s

1 will decrease to 60 percent.

2 63. The COA Addendum Project allocates export capacity between the Bureau and DWR
3 “[d]uring periods when exports are constrained by non-discretionary requirements imposed on the [CVP]
4 and the [SWP] South Delta exports” with the Bureau responsible for 65 percent – and DWR responsible
5 for 35 percent – during balanced water conditions, and the Bureau responsible for 60 percent – and DWR
6 responsible for 40 percent – during excess water conditions.

7 64. The COA Addendum Project includes a commitment that DWR:

8 will transport up to 195,000 acre-feet of [CVP] water through the California Aqueduct
9 Reaches 1, 2A, and 2B no later than November 30 of each year by direct diversion or by
10 redirection of stored [CVP] water at times those diversion do not adversely affect the
11 [SWP] purposes or do not conflict with [SWP] contract provisions. [DWR] will provide
12 available capacity at the Harvey O. Banks Pumping Plan (“Banks”) to the [CVP] to divert
13 or redivert 195,000 acre-feet when the diversion capacity at the south Delta intake to
14 Clifton court Forebay is in excess of 7,180 cubic feet per second during July 1 through
15 September 30, except when the diversion capacity at the south Delta intake to Clifton
16 Court Forebay in excess of 7,180 cubic feet per second shall be shared equally by [DWR]
17 and the [Bureau].

18 COA Addendum, p. 3.

19 65. Despite ongoing actions by the State Water Resources Control Board to update the water
20 quality standards applicable to the Delta, the COA Addendum Project would apply only the Delta
21 standards established in the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San
22 Joaquin Delta Estuary. Those standards are obsolete and insufficient to protect listed species and other
23 public trust resources and uses.

24 66. Although the Bureau prepared the COA Addendum EA, and DWR and the Bureau jointly
25 prepared the COA Final EIS/R, DWR did not prepare and circulate any new environmental analysis of
26 the Project for public comment before approval. Instead, on December 12, 2018, DWR Director Karla
27 Nemeth entered into the COA Addendum with the Bureau. At the same time she approved the Hold
28 Harmless Agreement.

 67. The Hold Harmless Agreement establishes that DWR is responsible for mitigating,
avoiding, or offsetting impacts from the WaterFix on CVP water supplies resulting from operation of the
WaterFix or from restrictions imposed on the CVP “through permits or other regulatory approvals issued
for [WaterFix] operations for the mitigation or avoidance of biological impacts attributable directly to

1 [WaterFix] operations.” Hold Harmless Agreement, p. 3. It states that it does not “relieve either Party to
2 the COA of any obligations or rights it may have under [the] COA.”

3 68. Petitioners are informed and believe that DWR has not examined the combined or
4 cumulative impact of the Hold Harmless Agreement and the COA Addendum Project on the
5 environment. Each allocates additional responsibility to DWR for providing flows and storage necessary
6 to satisfy regulatory standards. As the SWP’s storage capacity is finite, petitioners are informed and
7 believe that these shifts in responsibility will alter the SWP’s ability to meet the existing regulatory
8 standards for protection of fish and wildlife and water quality during droughts.

9 69. DWR’s Notice of Exemption was received by the Governor’s Office of Planning and
10 Research on December 14, 2018.

11 **FIRST CAUSE OF ACTION**

12 **(Violation of CEQA)**

13 **(Alleged by All Petitioners Against All Respondents)**

14 70. The paragraphs set forth above and below are realleged and incorporated herein by
15 reference.

16 71. Petitioners bring this First Cause of Action pursuant to PRC sections 21168 and 21168.5, on
17 the grounds that DWR committed a prejudicial abuse of discretion, by failing to proceed in the manner
18 required by law, in approving the COA Addendum Project and Hold Harmless Agreement without first
19 conducting the required CEQA review of the environmental impacts of the same.

20 72. CEQA requires public agencies to conduct environmental review prior to the time the
21 agency approves any project that may have a significant impact on the environment. Pub. Res. Code §§
22 21002.1, 21061, 21100, 21151; Guidelines § 15004(a). Under CEQA, the term “‘Project’ means an
23 activity which may cause either a direct physical change in the environment, or a reasonably foreseeable
24 indirect physical change in the environment, and which is . . . [a]n activity directly undertaken by any
25 public agency. PRC § 21065. “[P]roject” means the “whole of an action, which has a potential for
26 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect
27 physical change in the environment.” Guidelines § 15378(a). The term “project” refers to the “activity
28 which is being approved and which may be subject to several discretionary approvals by government

1 agencies” and not the government approvals themselves. *Id.* § 15378(c).

2 73. “Approval” of a project, for purposes of CEQA, means a decision by the agency “which
3 commits the agency to a definite course of action in regard to a project intended to be carried out by any
4 person.” *Id.* § 15352(a).

5 74. DWR’s consideration and approval of the COA Addendum Project and Hold Harmless
6 Agreement constitute project approvals “which may cause either a direct physical change in the
7 environment, or a reasonably foreseeable indirect physical change in the environment” within the
8 meaning of CEQA. PRC § 21065. Accordingly, DWR was required to comply with CEQA before
9 taking any action to approve them.

10 75. After determining that an activity qualifies as a “project” under CEQA, the agency must
11 determine whether there is an applicable CEQA exemption. DWR claims that CEQA exemptions allow
12 it to avoid environmental review: an exemption under PRC section 21169, which applies to projects
13 approved before CEQA, and Guidelines section 15261 (which exempts certain pre-1970 projects).
14 These exemptions are inapplicable.

15 76. PRC section 21169 applies only to projects “undertaken, carried out or approved on or
16 before the effective date of this section,” not projects approved in 2018.

17 77. Guidelines section 15261, the ongoing projects exemption, states that “if a project being
18 carried out by a public agency was approved prior to November 23, 1970,” the project is exempt unless
19 *either* (1) a “substantial portion” of the initially allocated funds for the project have not yet been spent,
20 and it is “still feasible to modify the project to mitigate” its potential environmental impacts “or to
21 choose feasible alternatives to the project,” *or* (2) “a public agency proposes to modify the project in
22 such a way that the project might have a new significant effect on the environment.” DWR claims this
23 exemption applies and that “neither exception to the exemption for ongoing projects” applies because
24 “SWP operations have been ongoing for several decades and a substantial amount of money has been
25 spent to carry out these operations.” DWR December 14 Notice of Exemption, Attachment, p. 1.

26 35. The ongoing projects exemption is inapplicable to the COA Addendum Project and the
27 Hold Harmless Agreement for the following reasons, among others:

28 a. First, the “project” being approved here is the future allocation of responsibility for

1 meeting water quality standards. Neither COA Addendum Project, nor the 1986 COA, were “approved
2 prior to November 23, 1970.” Guidelines § 15261(a). Indeed, DWR prepared the COA EIS/R when
3 these allocation decisions were last made. Therefore the ongoing projects exemption does not apply.

4 b. Second, even assuming *arguendo* that the “project” is the physical conveyance
5 system of the SWP, substantial portions of the SWP were completed *after* November 23, 1970 and even
6 after the 1986 COA EIS/R, including the Barker Slough Pumping Plant, and expansion of the Banks
7 Pumping Plant.

8 c. Third, the exemption is inapplicable because “a substantial portion of the public
9 funds allocated for the project have not been spent” and because the Project may be modified to mitigate
10 its impacts. *Id.* § 15261(a)(1). Since the future water storage and delivery can be modified to avoid
11 adverse impacts, and alternatives to those deliveries can readily be formulated to minimize
12 environmental harm, the ongoing projects exemption does not apply. *Id.*

13 d. Fourth, the exemption is inapplicable because DWR’s COA Addendum Project and
14 the Hold Harmless Agreement “might have a new significant effect on the environment.” Guidelines §
15 15261(a)(2). Indeed, the Project will modify water temperatures and carryover storage capacity, risking
16 detrimental impacts to fish and wildlife in critical water years, and more so in multiple critical year
17 droughts.

18 78. Even assuming that DWR’s claimed categorical exemption applied, CEQA Guidelines
19 section 15300.2(c) provides that exemptions are inapplicable “where there is a reasonable possibility that
20 the activity will have a significant effect on the environment due to unusual circumstances.” By
21 reallocating responsibility for meeting inbasin uses and export capacity, the COA Addendum Project and
22 the Hold Harmless Agreement alter reservoir elevations, reservoir releases, and water supply deliveries
23 both north and south of the Delta. Unusual circumstances exist here because the Project modifies the
24 available cool water storage, and river temperatures necessary for the survival of threatened and
25 endangered fish.

26 79. CEQA Guidelines section 15300.2(b) provides that categorical exemptions are inapplicable
27 “when the cumulative impact of successive projects of the same type in the same place, over time, is
28 significant.” This exception also applies, as the COA Addendum Project and the Hold Harmless

1 Agreement each shift additional responsibility to DWR's SWP to satisfy water quality standards and
2 environmentally protective flows. DWR has failed to assess the significant cumulative impact of this
3 reallocation of responsibility on the SWP's carryover storage, especially in multiple critical water years.
4 Petitioners are informed and believe that in such conditions, the SWP will lack sufficient ability to
5 provide the flows necessary to protect fish and wildlife, jeopardizing the survival of listed species.

6 80. In invoking the foregoing CEQA exemptions, DWR abused its discretion under CEQA. If
7 there is a reasonable possibility that the action being approved may cause a significant effect on the
8 environment, directly or indirectly, the approval must comply with CEQA. The COA Addendum Project
9 and Hold Harmless Agreement threaten a number of "reasonably foreseeable indirect physical change[s]
10 in the environment" and thus CEQA review was required before their approval.

11 81. Assuming *arguendo* that the whole of the project is the COA and not DWR's separate
12 approvals of the COA Addendum Project and Hold Harmless Agreement, then DWR's use of these
13 exemptions is equally flawed. Under PRC section 21166(a), (b), and (c), DWR is required to prepare a
14 subsequent or supplemental environmental impact report because "substantial changes are proposed in
15 the project which will require major revisions of the environmental impact report," "substantial changes
16 [have] occur[ed] with respect to the circumstances under which the project is being undertaken which
17 will require major revisions of the environmental report," and "new information, which was not known
18 and could not have been known at the time the environmental impact report was certified as complete
19 [has become] available." These changes include additions to the SWP, the listing of many Delta-
20 dependent species under the Endangered Species Act, and the COA Addendum Project's and Hold
21 Harmless Agreement's alterations to the COA. These changes require a subsequent or supplemental
22 environmental impact report. DWR's failure to prepare either violates CEQA.

23 SECOND CAUSE OF ACTION

24 (Violation of the 2009 Delta Reform Act)

25 (Alleged by All Petitioners Against All Respondents)

26 82. The paragraphs set forth above and below are realleged and incorporated herein by
27 reference.

28 83. The Delta Reform Act, Water Code sections 85000 *et seq.*, was passed by the Legislature in

1 recognition of the fact that the “[t]he Sacramento-San Joaquin Delta watershed and California’s water
2 infrastructure are in crisis” and that “[r]esolving the crisis requires fundamental reorganization of the
3 state’s management of Delta watershed resources.” Water Code § 85001(a). The Legislature’s goal was
4 “to provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide
5 for a more reliable water supply for the state, to protect and enhance the quality of water supply from the
6 Delta, and to establish a governance structure that will direct efforts across state agencies to develop a
7 legally enforceable Delta Plan.” *Id.* § 85001(c).

8 84. The Delta Reform Act requires any state agency “that proposes to undertake a covered
9 action” to “prepare a written certification of consistency with detailed findings as to whether the covered
10 action is consistent with the Delta Plan” and submit that written finding to the Delta Stewardship
11 Council. Water Code § 85225.

12 85. The Delta Reform Act defines “[c]overed action” as “a plan, program or project” as defined
13 by PRC section 21065 that:

- 14 (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
- 15 (2) Will be carried out, approved, or funded by the state or a local public agency.
- 16 (3) Is covered by one or more provisions of the Delta Plan.
- 17 (4) Will have a significant impact on achievement of one or both of the coequal
18 goals or the implementation of government-sponsored flood control programs to reduce
19 risks to people, property, and state interests in the Delta.

20 Water Code § 85057.5(a).

21 86. The COA Addendum Project and the Hold Harmless Agreement are both projects pursuant
22 to PRC section 21065, as each is “an activity which may cause either a direct physical change in the
23 environment, or a reasonably foreseeable indirect physical change in the environment” directly
24 undertaken by DWR. PRC §§ 21065, 21065(a).

25 87. While the Delta Reform Act states that “[r]outine maintenance and operation of the State
26 Water Project” is not a covered action, the COA Addendum Project and Hold Harmless Agreement do
27 not qualify for that exemption because they are neither routine maintenance nor routine operation of the
28 SWP. Water Code § 85057.5(b).

1 88. The 2013 Delta Plan prepared by the Delta Stewardship Council was found invalid and set
2 aside by the Sacramento Superior Court because it failed to satisfy the requirements of the Delta Reform
3 Act. Specifically, the Delta Plan failed to include “quantified or otherwise measurable targets associated
4 with achieving reduced Delta reliance, reduced environmental harm from invasive species, restoring
5 more natural flows, and increased water supply reliability, in accordance with the Delta Reform Act.”
6 Ruling on Submitted Matter, JCCP 4758 (Sacramento Superior Court, May 18, 2016) at 26. The Delta
7 Stewardship Council’s appeal of this decision is pending before the Third District Court of Appeal (Case
8 No. C082944). In addition, petitioners – and others – have challenged the Delta Stewardship Council’s
9 2018 Delta Plan Amendments, as those amendments violate CEQA, the Delta Reform Act, the Public
10 Trust Doctrine and other laws requiring informed decisionmaking. Sacramento Superior Court Case Nos.
11 34-2018-80002898, 34-2018-80002900, 34-2018-80002901, 34-2018-80002904.

12 89. Under the Delta Reform Act, DWR cannot approve the COA Addendum Project and Hold
13 Harmless Agreement without *first* making a determination of consistency with the Delta Plan. Water
14 Code § 85225. And because approval of the COA Addendum Project and the Hold Harmless Agreement
15 alters the sharing formula that determines responsibility for Delta outflow and storage, and threatens
16 overall cold-water storage during multiple critical dry years, DWR’s approvals of them conflict with the
17 Delta Reform Act’s coequal goals. For this reason the COA Addendum Project and Hold Harmless
18 Agreement are inherently inconsistent with what would be required by any valid Delta Plan.

19 90. Because DWR failed to “prepare a written certification of consistency with detailed findings
20 as to whether [each of these two] covered action[s] is consistent with the Delta Plan” as required by the
21 Delta Reform Act, its approval of them must be set aside. Water Code § 85225.

THIRD CAUSE OF ACTION

(Violation of the Public Trust Doctrine)

(Alleged by All Petitioners Against All Respondents)

25 91. The paragraphs set forth above and below are realleged and incorporated herein by
26 reference.

27 92. Water Code section 85023 states, “the longstanding constitutional principle of reasonable
28 use and the Public Trust Doctrine shall be the foundation of state water management policy and are

1 particularly important and applicable to the Delta.”

2 93. In *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 426, the court noted
3 that the public trust doctrine mandates that “before state courts and agencies approve water diversions
4 they . . . consider the effect of such diversions upon interests protected by the public trust, and attempt,
5 so far as feasible, to avoid or minimize any harm to those interests.” The *National Audubon Society*
6 Court went on to explain:

7 Just as the history of this state shows that appropriation may be necessary for efficient use of
8 water despite unavoidable harm to public trust values, it demonstrates that an appropriative
9 water rights system administered without consideration of the public trust may cause
10 unnecessary and unjustified harm to trust interests. As a matter of practical necessity the state
11 may have to approve appropriations despite foreseeable harm to public trust uses. In so
12 doing, however, the state must bear in mind its duty as trustee to consider the effect of the
13 taking on the public trust, and to preserve, so far as consistent with the public interest, the
14 uses protected by the trust.

15 *Id.*, citations omitted.

16 94. “Public trust easements are traditionally defined in terms of navigation, commerce and
17 fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and
18 general recreation purposes the navigable waters of the state, and to use the bottom of the navigable
19 waters for anchoring, standing, or other purposes.” *Marks v. Whitney* (1971) 6 Cal.3d 251, 259. For
20 nearly 50 years it has been settled law in California that public trust values also “encompass[] . . . the
21 preservation of those lands in their natural state, so that they may serve as ecological units for scientific
22 study, as open space, and as environments which provide food and habitat for birds and marine life, and
23 which favorably affect the scenery and climate of the area.”

24 95. The COA Addendum Project and Hold Harmless Agreement will adversely affect numerous
25 public trust resources, including flows and habitat necessary for fish, wildlife, and recreation.

26 96. Feasible alternatives exist that would mitigate or avoid these significant impacts, including,
27 but not limited to an alternative that incorporates additional goals for preservation of public trust
28 resources. Such alternatives would reduce diversions, have beneficial effects on fish and wildlife, and

1 would likely attain many of the basic objectives of DWR’s approvals.

2 97. By approving the COA Addendum Project and Hold Harmless Agreement despite the fact
3 that feasible alternatives exist that would preserve public trust resources to a greater extent than the
4 approved actions, DWR abdicated its affirmative statutory and constitutional “duties to take the trust into
5 account and protect public trust uses whenever feasible,” based on a fair and fully informed balancing of
6 the impacts of these alternatives on public trust resources. *San Francisco Baykeeper, Inc. v. State Lands*
7 *Com., supra*, 29 Cal.App.5th at 571.

8 **FOURTH CAUSE OF ACTION**

9 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**

10 **Project Approvals as Contrary to CCP §§ 1085 and 1094.5)**

11 **(Alleged by All Petitioners Against All Respondents)**

12 98. The paragraphs set forth above and below are realleged and incorporated herein by
13 reference.

14 99. DWR proceeded in excess of its jurisdiction and abused its discretion in purporting to
15 approve the COA Addendum Project and Hold Harmless Agreement and to issue a Notice of Exemption
16 for the same, because such approvals violate CCP sections 1085 and 1094.5 in the following respects,
17 among others:

- 18 a. such approvals were not granted in accordance with the procedures required by law;
 - 19 b. such approvals were not based on the findings required by law; and
 - 20 c. such approvals were not based on, or were contrary to, the evidence in the record
- 21 before DWR.

22 100. DWR failed to proceed in the manner required by law in the following respects, among
23 others:

- 24 a. DWR violated CEQA as alleged hereinabove;
- 25 b. DWR violated the Delta Reform Act as alleged hereinabove; and
- 26 c. DWR violated the Public Trust Doctrine as alleged hereinabove.

27 101. DWR’s actions in approving the COA Addendum Project and Hold Harmless Agreement
28 without complying with the procedures required by CCP sections 1085 and 1094.5 exceeded DWR’s

1 jurisdiction and constitute a prejudicial abuse of discretion, and therefore are invalid and must be set
2 aside.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, petitioners pray for relief as follows:

5 1. For interlocutory and permanent injunctive relief restraining DWR from taking any action to
6 carry out the COA Addendum Project and Hold Harmless Agreement pending, and following, the
7 hearing of this matter;

8 2. For a peremptory writ of mandate directing DWR to set aside and vacate its approval of the
9 COA Addendum Project, Hold Harmless Agreement, and Notice of Exemption thereon;

10 3. For declaratory relief declaring the COA Addendum Project and Hold Harmless Agreement,
11 their approval, and DWR's determination that they are exempt from CEQA to be unlawful;

12 4. For a peremptory writ of mandate directing DWR to suspend all activity implementing the
13 COA Addendum Project and Hold Harmless Agreement that could result in any change or alteration in
14 the physical environment until it has taken all actions necessary to bring its approval of the COA
15 Addendum Project and Hold Harmless Agreement into compliance with CEQA, the Delta Reform Act,
16 the Public Trust Doctrine and the Code of Civil Procedure;

17 5. For attorneys' fees under Code of Civil Procedure section 1021.5;

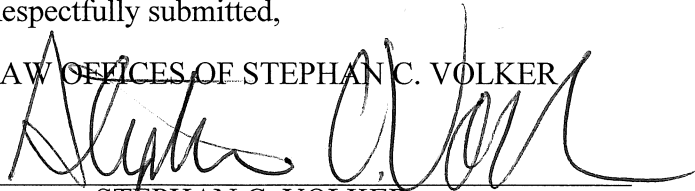
18 6. For costs incurred in this action; and

19 7. For such other equitable or legal relief as the Court may deem just and proper.

20
21 Dated: January 16, 2019

Respectfully submitted,

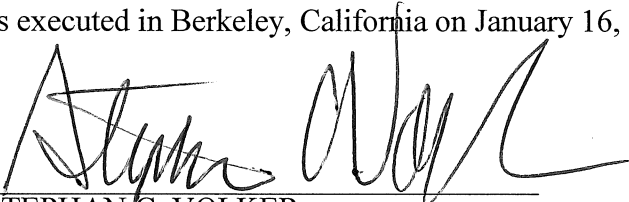
22 LAW OFFICES OF STEPHAN C. VOLKER

23
24 By:  STEPHAN C. VOLKER
25 Attorney for Plaintiffs and Petitioners
26 North Coast Rivers Alliance, et al.
27
28

1 VERIFICATION

2 I, Stephan C. Volker, am the attorney for petitioners/plaintiffs in this action. I make this
3 verification on behalf of the petitioners/plaintiffs because such parties and their representatives are
4 absent from the county in which my office is located. I have read the foregoing Verified Petition for
5 Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Attorneys' Fees and know its
6 contents. The facts therein alleged are true and correct to the best of my knowledge and belief, and are
7 based on documents within the public records underlying the approvals herein challenged.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct, and that this Verification was executed in Berkeley, California on January 16, 2019.

10 
11
12 STEPHAN C. VOLKER