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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9 SACRAMENTO DIVISION
10

11 AQUALLIANCE, CALIFORNIA WATER) Case No.:
12 IMPACT NETWORK, and CALIFORNIA)
13 SPORTFISHING PROTECTION) COMPLAINT FOR DECLARATORY AND
14 ALLIANCE,) INJUNCTIVE RELIEF
15 Plaintiffs,)
16 vs.)
17 UNITED STATES BUREAU OF)
18 RECLAMATION, and RICHARD)
WOODLEY, in his official capacity as Mid-)
Pacific Resource Manager of the Bureau of)
Reclamation,)
Defendants)

19
20 **INTRODUCTION**

21 1. In 1994, the Bay-Delta Accord was negotiated among state and federal water
22 and resource agencies, water contractors, and some environmental groups in an attempt to
23 address water supply and ecological problems associated with the increasing enforcement of
24 Endangered Species Act limits on Delta exports. Between 1995 and 2000, generally favorable
25 rainfall and run-off conditions existed, allowing the state and federal governments to make a
26 plan (CALFED) and change some contractual and operational obligations of the projects for
27 fish and wildlife. The Monterey Amendments to the State Water Project contracts were
28 litigated in state court and are now back in state court after another EIR, and the CALFED plan

1 has been tried and has failed as the joint state and federal solution to limiting the environmental
2 damage from Delta exports. A new effort to solve the Bay/Delta environmental and water
3 resources problems has just been started. Scientists and politicians understand where we are
4 today.

5 2. In commenting on Bay/Delta ecological issues, pre-eminent scientist Dr. Peter
6 Moyle recently said, “The fish don’t lie. The story that they tell is that California’s
7 environment is unraveling. Their demise is symptomatic of a much larger water crisis that,
8 unless addressed, will severely impact every Californian in the years to come.”

9 3. Assemblyman Jared Huffman, chair of the Water, Parks, and Wildlife
10 Committee said, “We clearly face a growing crisis in the salmon, steelhead and trout
11 populations of California. We also face a crisis in allocating and managing the water
12 deliveries of California to sustain our population growth and our economy. Unfortunately, the
13 legislature and the governor have been unable to develop a consensus on how to do this job.”
14 The purpose of this lawsuit is to force the Bureau of Reclamation to do a full environmental
15 impact statement on continuing water transfers that will consider all aspects of the
16 appropriateness of these north to south water transfers before additional damage is done to the
17 Central Valley ecosystems.

18 **JURISDICTION**

19 4. This court has jurisdiction over this action by virtue of 28 U.S.C. § 1331 (action
20 arising under the laws of the United States) and 5 U.S.C. § 702 (Administrative Procedure Act,
21 or APA).

22 5. As described below, plaintiffs have exhausted all administrative remedies
23 available to them, pursuant to 36 C.F.R. § 215.18(c).

24 6. The defendants’ violations of NEPA alleged herein are subject to judicial review
25 under the APA, 5 U.S.C. § 702.

26 **VENUE AND INTRADISTRICT ASSIGNMENT**

27 7. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e) because a
28 substantial part of the events or omissions giving rise to the claims occurred here; many of the

1 rivers, streams, and groundwater basins affected by the 2010-2011 Water Transfer Program are
2 located here; and several of the plaintiffs and defendants are based here.

3 8. Assignment to the Sacramento Division of this judicial district is proper by
4 virtue of L.R. 3-120(b) because the action arises here.

5 **PARTIES**

6 9. Plaintiff AQUALLIANCE is a California Public Benefit Corporation organized
7 to protect waters in the northern Sacramento River's watershed to sustain family farms,
8 communities, creeks and rivers, native flora and fauna, vernal pools, and recreation.
9 Currently, AquAlliance is a fiscally sponsored project by the Rose Foundation. Members and
10 officers of AquAlliance are deeply concerned about the public interest consequences of the
11 continuation of water transfers, year after year, with no environmental impact statement that
12 actually reviews the consequences and effects of the continuing transfers by the state and
13 federal governments. These proposed transfers will require the use of additional groundwater
14 and increase depletion of Sacramento Valley groundwater basins. AquAlliance fears that its
15 members will be injured by the additional water diverted from the groundwater basin without
16 adequate environmental analysis. Consequently, AquAlliance and its members would be
17 directly, adversely, and irreparably harmed by the project and its components, as described
18 herein, until and unless this Court provides the relief prayed for in this complaint.

19 10. Plaintiff CALIFORNIA WATER IMPACT NETWORK ("C-WIN") is a non-
20 profit, public benefit corporation formed under the laws of the State of California for the
21 purpose of protecting and restoring fish and wildlife resources, scenery, water quality,
22 recreational opportunities, agricultural uses, and other natural environmental resources and uses
23 of the rivers and streams of California, including the San Francisco Bay-Delta estuary, also
24 known as the Sacramento-San Joaquin Bay-Delta ("Bay-Delta"), its watershed and its
25 underlying groundwater resources. Officers of C-WIN reside in, use, and enjoy the Bay-Delta
26 estuary and the Sacramento Valley watershed. Members and officers of the California Water
27 Impact Network are deeply concerned about the public interest consequences of continuation of
28 water transfers year after year with no environmental impact statement that actually reviews

1 continuing transfers by the state and federal government. Consequently, the California Water
2 Impact Network and its members would be directly, adversely and irreparably harmed by the
3 Project and its components, as described herein, until and unless this Court provides the relief
4 prayed for in this complaint.

5 11. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
6 (“CSPA”) is a non-profit organization with more than 2500 members throughout California
7 dedicated to protecting, preserving and enhancing the fisheries and associated aquatic and
8 riparian ecosystems of California waterways, including the Sacramento Valley’s rivers and
9 groundwater basins leading to the Bay-Delta. CSPA and its members actively participate in
10 water rights and water quality processes, engage in education and organization of the fishing
11 community, conduct restoration efforts, and vigorously enforce environmental laws enacted to
12 protect fisheries, habitat and water quality. CSPA’s members reside and own property
13 throughout California as well as in those areas served by the Central Valley and State Water
14 Projects, and use the waters and lands affected by these Projects, including the Bay-Delta, for
15 recreational, wildlife viewing, scientific, and educational purposes. CSPA and its members
16 would be directly, adversely and irreparably harmed by the 2010-2011 Water Transfer Project
17 and its components, as described herein, until and unless this Court provides the relief prayed
18 for in this petition.

19 12. As described above, the plaintiff organizations and their respective
20 members have been and will continue to be actively involved in efforts to protect and restore
21 Central Valley rivers, streams, animal habitats, and groundwater basins. Among other
22 activities, some or all of the plaintiffs commented upon the draft environmental assessment
23 (EA) for the 2010-2011 Water Transfer Project.

24 13. Each of the plaintiff organizations described above has members who
25 live and/or work in communities located near or adjacent to the Central Valley of California,
26 and specifically near the site of the water transfers that would be authorized by the Transfer
27 Project. Plaintiffs’ members use these ecosystems for a variety of purposes, including, but not
28 limited to farming, boating, hiking, photography, scientific study, wildlife observation, hunting,

1 and fishing. They intend to continue to do so on an ongoing basis in the future. Plaintiffs’
2 members derive recreational, spiritual, professional, aesthetic, educational and other benefits
3 and enjoyment from these activities.

4 14. The Bureau’s decision to approve the Transfer Project without preparing
5 an Environmental Impact Statement, in violation of the National Environmental Policy Act
6 (NEPA) and the APA, as alleged below, has harmed and injured, and is continuing to harm
7 and injure, the above-described interests of plaintiffs and their members by causing
8 irreversible harmful effects to the rivers, streams, animal habitats, and groundwater basins of
9 the Central Valley and to the imperiled species that depend upon those habitats. These
10 decisions deprive plaintiffs and their members of the recreational, spiritual, professional,
11 aesthetic, educational, economic and other benefits they presently derive from these habitats.
12 Additionally, defendants’ actions deny plaintiffs’ members their right to have the laws of the
13 land implemented and enforced, and the satisfaction and peace of mind associated with
14 witnessing the enforcement of the nation’s environmental protection laws.

15 15. Consequently, plaintiffs and their members have been, are being, and
16 will continue to be adversely affected and irreparably injured by the Bureau’s approval of the
17 Transfer Program. These injuries are actual and concrete and would be redressed by the relief
18 sought herein. Plaintiffs have no adequate remedy at law.

19 16. The defendants in this action are:

20 a. The Mid-Pacific Region of the Bureau of Reclamation is the federal
21 agency manager of the Central Valley Project and the proponent of
22 the Transfer Project.

23 b. Richard Woodley, Mid-Pacific Regional Resource Manager, who
24 approved the FONSI for the 2010-2011 Water Transfer Program. He
25 is sued in his official capacity.

26 **FACTUAL BACKGROUND**

27 17. Between 1995 and 2000, comprehensive CalFED Bay-Delta Program plans were
28 drawn up by the state and federal governments for Delta conveyance, new storage, water use

1 efficiency improvements, Delta ecosystem restoration, improving levee stability, Delta water
2 quality, and facilitating water transfers. Over the next six years, the CALFED program proved
3 unable to solve Bay/Delta problems. The 2000-2006 years saw the highest pumping in the
4 history of the Bay/Delta water projects, and the fisheries in the Delta essentially collapsed. The
5 collapse gained a name, the Pelagic Organism Decline, and regulatory agencies slowly came to
6 the conclusion that high pumping was unsustainable if the Bay/Delta ecology was to be
7 preserved.

8 18. The water transfer program from the failed CALFED program was implemented
9 sporadically until drought conditions returned to California in 2007 with a runoff of only 53%
10 of normal. This lawsuit is part of a continuing action by plaintiffs to get for Californians what
11 the law requires: an environmental impact statement that fully addresses the issues inherent in
12 more water transfers from the Sacramento Valley and more export pumping in the Bay/Delta.
13 Since the Water Transfer Program increases such pumping, an environmental impact statement
14 is required by NEPA and the regulations.

15 19. In 2008, drought conditions continued in California, although runoff improved
16 to 63 per cent of normal. In May, the Pacific Fisheries Management Council closed
17 commercial salmon fishing for all of 2008 due to extraordinarily poor spawning salmon returns
18 and a fear that any fishing might result in species extinction. Meanwhile, the California
19 Department of Water Resources (DWR) established and prepared to operate a 2009 Drought
20 Water Bank, including identification of potential water sellers and buyers.

21 20. In December 2008, the United States Fish and Wildlife Service (Service)
22 released a new Delta smelt biological opinion, resulting in an appreciable limit on Delta
23 exports.

24 21. The month of January 2009 was the eighth-driest January on record for
25 California. Dry conditions continued in California through September. Runoff in 2009
26 reached just 65 percent of average statewide.

27 22. In February of 2009 the State Water Resources Control Board notified all water
28 right holders that there might not be enough water to meet all rights and needs in 2009. The

1 next day, Governor Arnold Schwarzenegger proclaimed a statewide drought emergency, urging
2 streamlined permitting and environmental review for state and federal 2009 Drought Water
3 Bank water transfers.

4 **PROCEDURAL HISTORY**

5 23. In early March of 2009 DWR issued a notice of exemption from the California
6 Environmental Quality Act (CEQA) for the 2009 state Drought Water Bank and also issued an
7 addendum to an earlier environmental report from 2007 in an attempt to find a way to approve
8 the project. The U.S. Bureau of Reclamation coincidentally issued an Environmental
9 Assessment (EA) on its drought water bank participation, and provided just two weeks'
10 opportunity for public comment. Later in March, the Butte Environmental Council (BEC),
11 California Water Impact Network (C-WIN), and California Sportfishing Protection Alliance
12 (CSPA) submitted extensive comments critical of the exemption from CEQA on state
13 emergency grounds, and alleged lack of compliance with both CEQA and the National
14 Environmental Policy Act (NEPA).

15 24. In April, BEC, C-WIN, and CSPA filed protests of the 2009 Drought Water
16 Bank water right permit changes requested by DWR and the U.S. Bureau of Reclamation to
17 temporarily “consolidate places of use” – essentially merging the service areas of the State
18 Water Project (SWP) and the Central Valley Project (CVP) for 2009 through 2010 for
19 completing all Drought Water Bank transfers.

20 25. In May of 2009, the Pacific Fisheries Management Council closed the
21 commercial salmon fishing season for an unprecedented second consecutive year due to
22 continued poor spawning salmon returns and renewed fears that any fishing might drive the fish
23 to extinction. Also in May, a coalition consisting of BEC, C-WIN, and CSPA filed suit in
24 Alameda County Superior Court against the exemption of the 2009 Drought Water Bank from
25 CEQA.

26 26. In July of 2009, Drought Water Bank transfers began with the State Water
27 Project and the Central Valley Project receiving water sold from Sacramento Valley water right
28 holders, pumping the transferred water from the Delta for delivery to Drought Water Bank

1 recipients. Initial requests were for 257,740 acre-feet, of which just 69,869 acre-feet were
2 delivered. In December of 2009, DWR and the U.S. Bureau of Reclamation decided to
3 establish a “Water Transfer Program for 2010-2011,” anticipating that 2010 could still be a dry
4 year.

5 27. In January of 2010, AquAlliance was founded in Chico to protect Sacramento
6 Valley waters from exploitation and joined C-WIN and CSPA to submit comments on an
7 Environmental Assessment [EA] for the 2010-2011 Water Transfer Program and an unlawful
8 Finding of No Significant Environmental Impact (FONSI) by the Bureau.

9 28. In March of this year, Alameda County Superior Court Judge Alice Vilardi ruled
10 that the 2009 Drought Water Bank was not exempt from CEQA because droughts do not fit
11 definitions of emergencies for CEQA purposes.

12 29. To help facilitate the transfer of water throughout the State, the California
13 Department of Water Resources (DWR) and the Bureau initiated the 2010-2011 Water Transfer
14 Program. Since DWR’s program is limited by the state court decision, the Bureau has taken the
15 lead and is moving forward on the CVP Transfer Program instead. The non-CVP transfers are
16 moving forward as individual transfers between buyers and sellers based upon negative
17 declarations filed by individual water sellers.

18 30. The Mid-Pacific Region of the Bureau of Reclamation participates in the water
19 transfers to ensure that operations of the Central Valley Project (CVP) and the State Water
20 Project (SWP) can be coordinated effectively to maximize the ability of the state and federal
21 governments to move water from willing sellers to buyers to address critical water needs.

22 31. The Bureau of Reclamation reviews and approves, as appropriate, proposed
23 transfers by CVP contractors in accordance with the Interim Guidelines for the Implementation
24 of Water Transfers under the Central Valley Project Improvement Act (CVPIA).

25 32. In accordance with the National Environmental Policy Act of 1969 (NEPA), as
26 amended, Reclamation has found that the approval of proposed water transfers in support of the
27 2010-2011 Water Transfer Program (the Proposed Action) is not a major federal action that
28 would significantly affect the human environment.

1
2 **SIGNIFICANT ENVIRONMENTAL EFFECTS OF THE 2010-2011 WATER**
3 **TRANSFER PROJECT**

4 33. Acquisition of water via groundwater substitution or cropland idling would
5 change the rate and timing of flows in the Sacramento and lower American Rivers. Flow and
6 temperature requirements, including Water Right Orders 90-5 and 91-1 temperature control
7 planning requirements for the Sacramento River, may not be met under the Proposed Action.
8 Because there would be a change in timing and rate of river flows, the annual supply of water
9 to Project or non-Project users that are not participating in transfers would likely decrease.

10 34. Groundwater substitution transfers authorized by this E.A. will likely affect
11 groundwater hydrology. The potential effects would be decline in groundwater levels,
12 interaction with surface water, land subsidence, and water quality impacts.

13 35. Groundwater substitution and cropland idling water transfers would alter surface
14 water elevation and reservoir storage in Lake Shasta and Folsom Reservoir.

15 36. Cropland idling transfers could increase soil loss from wind erosion. In areas
16 with silt loam soils, soil loss could be significant.

17 37. Decreasing groundwater levels could reduce part of the water base for natural
18 and managed seasonal wetlands and riparian communities. Cropland idling under the Proposed
19 Action would reduce return flows, potentially affecting neighboring managed seasonal
20 wetlands.

21 38. Cropland idling of seasonally flooded agricultural land under the Proposed
22 Action could reduce the amount of over-winter forage for migratory birds.

23 39. In compliance with Section 7 of the Endangered Species Act, the Bureau of
24 Reclamation is consulting with the U.S. Fish and Wildlife Service (USFWS) on the Proposed
25 Action. The 2010-2011 Water Transfer Program will adopt the cropland idling conservation
26 measures in the USFWS Biological Opinion. These measures are designed to minimize effects
27 from water transfers on special status species. As part of the approval process, Reclamation
28 will have access to the land to verify how the water transfer is being made available and to

1 verify that the following environmental commitments to protect the giant garter snake (GGS)
2 are being implemented:

3 40. The block size of idled rice parcels will be limited to 320 acres in size with no
4 more than 20 percent of rice fields idled cumulatively (from all sources of fallowing) in each
5 county. The 320-acre blocks will not be located on opposite sides of a canal or other waterway,
6 and will not be immediately adjacent to another fallowed parcel (a checkerboard pattern is the
7 preferred layout).

8 41. Reclamation will provide a map to the USFWS in June of each year showing the
9 parcels of riceland that are idled for the purpose of transferring water in 2010 and 2011. These
10 maps will be prepared to comport to Reclamation's GIS standards.

11 42. Parcels participating in cropland idling will not include lands in the Natomas
12 Basin.

13 43. The maximum amount of water made available by cropland idling / crop shifting
14 would be 109,469 acre feet in Colusa, Glenn, Sutter, and Yolo counties. If rice fields were
15 idled, the maximum acreage from idling from CVP sellers would be about 33,172 acres, which
16 would be about 7 percent of 2008 rice acreage in the four counties.

17 44. The cumulative analysis does not adequately consider the environmental effects
18 of other potential water transfers that could occur in the 2010 and 2011 transfer season,
19 including non-CVP water transfers and other existing water transfer and groundwater
20 programs, including the Lower Yuba River Accord.

21 45. According to the FONSI, twenty entities have indicated interest in selling non-
22 CVP water for transfer in 2010 and 2011. From non-CVP sources, sellers could potentially
23 transfer up to 90,100 acre-feet from cropland idling, 48,700 acre-feet from groundwater
24 substitution, 54,000 acre-feet from reservoir reoperation, and 3,100 acre-feet from other
25 sources.

26 46. According to the EA/FONSI, the total annual maximum water available for
27 transfer from CVP and non-CVP sellers would be 199,569 acre-feet from cropland idling / crop
28

1 shifting and 159,109 acre-feet from groundwater substitution. The cumulative total annual
2 amount potentially transferred from all sources would be up to 415,778 acre-feet.

3 47. The Proposed Action identifies 15 entities that contract with Reclamation that
4 may be willing to sell water for transfer to interested buyers in the export service area. About
5 219,878 acre-feet of water could be made available for transfer through a combination of
6 groundwater substitution, cropland idling, or crop substitution. The Proposed Action only
7 includes those actions over which Reclamation has approval authority. The remainder of the
8 transfers that could occur in 2010 and 2011 are considered only in the context of cumulative
9 impacts.

10 48. An Environmental Assessment (EA) was prepared to evaluate the potential
11 environmental impacts associated with the Proposed Action and the No Action Alternative.
12 The estimates analyzed in the draft EA reflect the potential upper limit of available water.
13 However, actual transfers would depend on hydrology, interested buyers, and the amounts that
14 sellers would ultimately have available for transfer in 2010 and 2011, as well as compliance
15 with CVPIA transfer requirements.

16 **FIRST CLAIM FOR RELIEF**

17 Violation of NEPA and the Administrative Procedures Act (APA): 18 Failure of 2010-2011 Water Transfer Program EA to Analyze Direct, Indirect and Cumulative 19 Impacts

20 49. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
21 contained in the preceding paragraphs.

22 50. The 2010-2011 Water Transfer Program environmental assessment [EA] fails to
23 adequately analyze or take a hard look at the Program's likely direct and indirect impacts on the
24 San Francisco garter snake, the Sacramento winter and spring run salmon, the Delta smelt, and
25 the Sacramento steelhead and their habitat. For example, approximately 92 percent of the
26 Water Transfer Program area constitutes suitable habitat for these species, which could be
27 rendered unsuitable due to the Water Transfer Program. Virtually all of the Project's planned
28 water transfers are in core areas associated with endangered species habitat and retain most of

1 the remaining population of the endangered species. However, the 2010-2011 Water Transfer
2 Program EA fails to discuss or analyze the effects of these actions on endangered and special
3 interest species.

4 51. In addition, the Water Transfer Project EA evaluates effects of the proposed
5 action on wildlife and wildlife habitats by estimating the effects on certain management
6 indicator species. As set forth above, however, the impact analysis on the significant impacts
7 listed above were inadequate and otherwise insufficient to support the conclusions of the Water
8 Transfer Project EA.

9 52. The Water Transfer Project EA also fails to consider and evaluate the
10 cumulative impacts of the 2010-2011 Program together with numerous other past, present, and
11 reasonably foreseeable future projects comprising parts of an on-going water transfer program
12 that has not been evaluated by an EIS.

13 53. Defendants' failure in the Water Transfer Project EA to consider and evaluate
14 the direct, indirect, and cumulative impacts to Central Valley aquatic species and their habitats
15 violated and is continuing to violate Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) and
16 was arbitrary, capricious, an abuse of discretion, not in accordance with law, and without
17 observance of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2).

18 **SECOND CLAIM FOR RELIEF**

19 Violation of NEPA and the APA: 20 Failure to Prepare EIS on the 2010-2011 Water Transfer Program

21 54. Plaintiffs re-allege, as if fully set forth herein, each and every allegation
22 contained in the preceding paragraphs.

23 55. Defendants' approval of the Water Transfer Program was a major federal action
24 significantly affecting the human environment within the meaning of 42 U.S.C. § 4332(2)(C)
25 for at least the following reasons:

26 a. The 2010-2011 Water Transfer Program affects public health or safety within
27 the meaning of 40 C.F.R. § 1508.27(b)(2);
28

1 C. Order defendants to prepare an EIS for any new proposed Water Transfer
2 Program that fully complies with NEPA;

3 D. In the interim, order defendants to manage the CVP without allowing federal
4 facilities to be used for or to facilitate water transfers from north of the Bay/Delta to areas south
5 of the Bay/Delta;

6 E. Award plaintiffs their costs and expenses (including reasonable attorney, expert
7 witness, and consultant fees); and

8 F. Award plaintiffs such further relief as the Court deems appropriate.

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10 Dated: July 1, 2010

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Respectfully submitted,

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/s/ Michael B. Jackson

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Michael B. Jackson
Attorney for Plaintiffs

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