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**ENDORSED
FILED
ALAMEDA COUNTY**
APR 18 2008
CLERK OF THE SUPERIOR COURT
~~M Hayes~~
Deputy

5 Attorneys for Petitioners:
6 BUTTE ENVIRONMENTAL COUNCIL
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
7 CALIFORNIA WATER IMPACT NETWORK

RC 094 46708

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF ALAMEDA

11 BUTTE ENVIRONMENTAL COUNCIL;)
CALIFORNIA SPORTFISHING PROTECTION)
12 ALLIANCE; AND CALIFORNIA WATER)
IMPACT NETWORK,)

Case No. (To be Assigned)
**VERIFIED PETITION FOR WRIT OF
MANDATE**

13)
14 Petitioners,)
vs.)

(Code Civ. Proc., § 1084 et seq.; Pub.
Resources Code, §§ 21168, 21168.5)

15 CALIFORNIA DEPARTMENT OF WATER)
RESOURCES; CALIFORNIA NATURAL)
16 RESOURCES AGENCY; GOVERNOR ARNOLD)
SCHWARZENEGGER; AND DOES 1-50,)

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

17 Respondents,)

18)
ALAMEDA COUNTY WATER DISTRICT;)
19 AMARAL RANCH; ANTELOPE VALLEY)
EAST KERN WATER AGENCY; AVENAL)
20 STATE PRISON; BANTA CARBONA)
IRRIGATION DISTRICT; BELLA VISTA)
21 WATER DISTRICT; BROADVIEW WATER)
DISTRICT; BROWNS VALLEY IRRIGATION)
22 DISTRICT; BUTTE WATER DISTRICT;)
BYRON BETHANY IRRIGATION DISTRICT;)
23 CARTER MUTUAL WATER COMPANY;)
CASTAIC LAKE WATER AGENCY; CASTAIC)
24 LAKE WATER AUTHORITY; CENTRAL)
COAST WATER AUTHORITY; CITY OF)
25 AVENAL; CITY OF COALINGA; CITY OF)
HURON; CITY OF SACRAMENTO; CITY OF)
26 YUBA CITY; CONAWAY PRESERVATION)
GROUP; CONTRA COSTA WATER DISTRICT;)
27 DEL PUERTO WATER DISTRICT; DESERT)
WATER AGENCY; DUDLEY RIDGE WATER)

1 DISTRICT; DUNNIGAN WATER DISTRICT;)
EAGLE FIELD WATER DISTRICT; EAST BAY)
2 MUNICIPAL UTILITY DISTRICT; GARDEN)
HIGHWAY MUTUAL WATER COMPANY;)
3 GLENN-COLUSA IRRIGATION DISTRICT;)
GOOSE CLUB FARMS; JAMES IRRIGATION)
4 DISTRICT; KERN COUNTY WATER AGENCY;)
LAGUNA WATER DISTRICT; LEWIS RANCH;)
5 MAXWELL IRRIGATION DISTRICT; MERCED)
IRRIGATION DISTRICT; MERCY SPRINGS)
6 WATER DISTRICT; MERIDIAN FARMS)
WATER COMPANY; METROPOLITAN)
7 WATER DISTRICT OF SOUTHERN)
CALIFORNIA; MOJAVE WATER AGENCY;)
8 NAPA COUNTY FLOOD CONTROL AND)
WATER CONSERVATION DISTRICT;)
9 NATOMAS CENTRAL MUTUAL WATER)
COMPANY; OAK FLAT WATER DISTRICT;)
10 ORLAND UNIT WATER USER'S)
ASSOCIATION; ORO LOMA WATER)
11 DISTRICT; PACHECO WATER DISTRICT;)
PALMDALE WATER DISTRICT; PANOCHÉ)
12 WATER DISTRICT; PARROTT INVESTMENT)
COMPANY; PATTERSON IRRIGATION)
13 DISTRICT; PELGER MUTUAL WATER)
COMPANY; PINNACLE LAND VENTURES,)
14 LLC (BROOMIESIDE FARMS); PLACER)
COUNTY WATER AGENCY; PLEASANT)
15 GROVE-VERONA MUTUAL WATER)
COMPANY; PLUMAS MUTUAL WATER)
16 COMPANY; PRINCETON-CODORA-GLENN)
IRRIGATION DISTRICT; PROVIDENT)
17 IRRIGATION DISTRICT; RECLAMATION)
DISTRICT 1606; RECLAMATION DISTRICT)
18 1004; RECLAMATION DISTRICT 108;)
RICHVALE IRRIGATION DISTRICT; RIVER)
19 GARDEN FARMS; SACRAMENTO RIVER)
RANCH; SACRAMENTO SUBURBAN WATER)
20 DISTRICT; SAN LUIS & DELTA MENDOTA)
WATER AUTHORITY; SAN BENITO COUNTY)
21 WATER DISTRICT; SAN BERNARDINO)
VALLEY MUNICIPAL WATER DISTRICT;)
22 SAN DIEGO COUNTY WATER AUTHORITY;)
SANTA CLARA VALLEY WATER DISTRICT;)
23 SOUTH SUTTER WATER DISTRICT; SUTTER)
MUTUAL WATER COMPANY; SUTTER)
24 EXTENSION WATER DISTRICT; SYCAMORE)
MUTUAL WATER COMPANY; TEHAMA)
25 COLUSA CANAL AUTHORITY;)
TRANQUILITY IRRIGATION DISTRICT;)
26 TULARE LAKE BASIN WATER STORAGE)
DISTRICT; UPPER SWANSTON RANCH;)
27 WALNUT VALLEY WATER DISTRICT; WEST)
28)

1 SIDE IRRIGATION DISTRICT; WEST)
2 STANISLAUS IRRIGATION DISTRICT;)
3 WESTERN CANAL WATER DISTRICT;)
4 WESTLANDS WATER DISTRICT; YUBA)
5 COUNTY WATER AGENCY; AND DOES 51-)
6 100,)
7)
8 Real Parties In Interest.)
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1 Petitioners BUTTE ENVIRONMENTAL COUNCIL, CALIFORNIA SPORTFISHING
2 PROTECTION ALLIANCE, and CALIFORNIA WATER IMPACT NETWORK (hereinafter,
3 “Petitioners”) allege as follows:

4 1. Petitioners hereby challenge Respondents CALIFORNIA DEPARTMENT OF WATER
5 RESOURCES, CALIFORNIA NATURAL RESOURCES AGENCY, and GOVERNOR ARNOLD
6 SCHWARZENEGGER (“Respondents”)’s approval of the 2009 Drought Water Bank (hereinafter,
7 “DWB” or “Project”) on grounds that said approval violates the California Environmental Quality
8 Act, at Public Resources Code § 21000 et seq., and the CEQA Guidelines, at 14 California Code of
9 Regulations § 15000 et seq. (collectively, “CEQA”), and other laws.

10 2. The Drought Water Bank is a “one-year transfer program to obtain water from willing sellers
11 upstream of the [Sacramento and San Joaquin rivers] Delta for sale to water users experiencing
12 shortages due to extreme drought conditions and regulatory pumping curtailments.” (See Exhibit 1
13 [Notice of Exemption].)¹

14 3. In approving the DWB and making the associated findings, Respondents improperly relied
15 on the “emergency” exemption provisions of CEQA, and, based thereon, did not otherwise engage
16 in the environmental impact analysis required under CEQA or otherwise comply with CEQA.

17 4. Unless an exemption applies, CEQA requires that government agencies engage in advance
18 planning to avoid unnecessary environmental harm before they approve any project that affects the
19 environment. This advance planning includes preparation of an Environmental Impact Report, which
20 is “the heart of CEQA” and the “environmental ‘alarm bell’ whose purpose it is to alert the public
21 and its responsible officials to environmental changes before they have reached ecological points of
22 no return.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47
23 Cal.3d 376, 392 (*Laurel Heights I*)).

24 5. The Legislature has included a number of exemptions from CEQA where such advance
25 planning would interfere with the achievement of other legislative goals. The two statutory
26 exemptions at issue in this case apply in conditions of “emergency.” But the Legislature has strictly

27 _____
28 ¹ All exhibits referred to herein are attached hereto and incorporated by reference herein.

1 limited the conditions that constitute an “emergency” that would justify ignoring CEQA’s advance
2 planning requirements. As alleged in more detail below, the 2009 Drought Water Bank does not meet
3 these statutory requirements, which must be “interpreted in such manner as to afford the fullest
4 possible protection to the environment within the reasonable scope of the statutory language.” (*Laurel*
5 *Heights I, supra*, 47 Cal.3d at 390.) Therefore, Respondents abused their discretion in exempting the
6 Project from environmental review.

7 PARTIES

8 6. Petitioner BUTTE ENVIRONMENTAL COUNCIL (“BEC”) is, and at all times relevant to
9 this proceeding was, a non-profit public benefit corporation founded in 1975, devoted to
10 environmental education, information referral services, and advocacy. BEC has dedicated over 33
11 years to protecting the exceptional quality of life in the 1,670 square miles of Butte County, and is
12 the region’s leading environmental organization. The cities of Chico, Oroville, Gridley, Biggs, and
13 Paradise bring Butte County’s population to over 204,000. The community-based, non-profit
14 organization is managed by a board of directors, two staff members, interns and volunteers, and
15 currently has more than 850 members.

16 7. Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”) is, and
17 at all times relevant to this proceeding was, a non-profit public benefit corporation founded in 1983
18 to conserve, restore, and enhance the state’s water quality, wildlife, and fishery resources and their
19 aquatic ecosystems and associated riparian habitats. To further these goals, CSPA actively seeks
20 federal and state agency implementation of environmental regulations and statutes and routinely
21 participates in administrative, legislative, and judicial proceedings.

22 8. Petitioner CALIFORNIA WATER IMPACT NETWORK (“C-WIN”) is, and at all times
23 relevant to this proceeding was, a non-profit public benefit corporation located in Santa Barbara,
24 California, that advocates for the equitable and environmentally sensitive use of California’s water,
25 including instream uses, through research, planning, public education, and litigation.

26 9. The actions complained of herein will have detrimental impacts on Petitioners and others.
27 Petitioners have demonstrated their interest in the DWB Project by, *inter alia*, participating in
28 numerous public agency meetings and decision-making processes concerning the environmental

1 impacts related to the DWB Project and other state water projects. Petitioners participated in DWR's
2 process leading up to the Project approval and opposed the DWB Project. The interests of Petitioners
3 and their members have been, are being, and unless the relief requested herein is granted, will
4 continue to be adversely affected and injured by Respondents' failure to comply with applicable law
5 for the DWB Project.

6 10. Respondent CALIFORNIA DEPARTMENT OF WATER RESOURCES (hereinafter,
7 "DWR") is, and at all times relevant to this proceeding was, an agency of the State of California
8 located in Sacramento, California. DWR is the lead agency under CEQA for the DWB Project.

9 11. Respondent CALIFORNIA NATURAL RESOURCES AGENCY (hereinafter, "Resources")
10 is, and at all times relevant to this proceeding was, an agency of the State of California located in
11 Sacramento, California. Resources oversees DWR's policies, activities, and budget.

12 12. Respondent GOVERNOR ARNOLD SCHWARZENEGGER (hereinafter, "the Governor")
13 is governor of the State of California.

14 13. Respondents DOES 1 through 50, inclusive, are sued under fictitious names. Petitioners are
15 ignorant of the true names and capacities, whether individual, corporate, governmental, or otherwise,
16 of the Respondents named in this Petition as DOES 1 through 50, inclusive, and therefore sue these
17 Respondents by these fictitious names. Petitioners will amend this Petition to allege their true names
18 and capacities when ascertained. Petitioners are informed and believe, and based thereon allege, that
19 each of these fictitiously named Respondents are responsible in some manner for the acts or
20 omissions alleged herein.

21 14. Without conceding that any of the following entities are recipients of the DWB approval
22 under Public Resources Code section 21167.6.5 or necessary or indispensable parties under Code of
23 Civil Procedure section 389, Petitioners name the following entities as Real Parties in Interest
24 because they are listed as potential sellers of water in the 2009 Drought Water Bank Final Addendum
25 (defined hereinafter):

- 26 (1) Amaral Ranch
27 (2) Browns Valley Irrigation District
28 (3) Butte Water District

- 1 (4) Carter Mutual Water Company
- 2 (5) City of Sacramento
- 3 (6) Conaway Preservation Group
- 4 (7) Garden Highway Mutual Water Company
- 5 (8) Glenn-Colusa Irrigation District
- 6 (9) Goose Club Farms
- 7 (10) Lewis Ranch
- 8 (11) Maxwell Irrigation District
- 9 (12) Merced Irrigation District
- 10 (13) Meridian Farms Water Company
- 11 (14) Natomas Central Mutual Water Company
- 12 (15) Orland Unit Water User's Association
- 13 (16) Parrott Investment Company
- 14 (17) Pelger Mutual Water Company
- 15 (18) Pinnacle Land Ventures, LLC (Broomieside Farms)
- 16 (19) Placer County Water Agency
- 17 (20) Pleasant Grove-Verona Mutual Water Company
- 18 (21) Plumas Mutual Water Company
- 19 (22) Princeton-Codora-Glenn Irrigation District
- 20 (23) Provident Irrigation District
- 21 (24) Reclamation District 108
- 22 (25) Reclamation District 1004
- 23 (26) Richvale Irrigation District
- 24 (27) River Garden Farms
- 25 (28) Sacramento River Ranch
- 26 (29) Sacramento Suburban Water District
- 27 (30) South Sutter Water District
- 28 (31) Sutter Mutual Water Company

- 1 (32) Sutter Extension Water District
- 2 (33) Sycamore Mutual Water Company
- 3 (34) Upper Swanston Ranch
- 4 (35) Western Canal Water District
- 5 (36) Yuba County Water Agency

6 15. Without conceding that any of the following entities are recipients of the DWB approval
7 under Public Resources Code section 21167.6.5 or necessary or indispensable parties under Code of
8 Civil Procedure section 389, Petitioners name the following entities as Real Parties in Interest
9 because they are listed as potential buyers of water in the 2009 Drought Water Bank Final
10 Addendum:

- 11 (1) Alameda County Water District
- 12 (2) Antelope Valley East Kern Water Agency
- 13 (3) Avenal State Prison
- 14 (4) Banta Carbona Irrigation District
- 15 (5) Bella Vista Water District
- 16 (6) Broadview Water District
- 17 (7) Byron Bethany Irrigation District
- 18 (8) Castaic Lake Water Agency
- 19 (9) Central Coast Water Authority
- 20 (10) City of Huron
- 21 (11) City of Avenal
- 22 (12) City of Coalinga
- 23 (13) City of Yuba City
- 24 (14) Contra Costa Water District
- 25 (15) Del Puerto Water District
- 26 (16) Desert Water Agency
- 27 (17) Dudley Ridge Water District
- 28 (18) Dunnigan Water District

- 1 (19) Eagle Field Water District
- 2 (20) James Irrigation District
- 3 (21) Kern County Water Agency
- 4 (22) Laguna Water District
- 5 (23) Mercy Springs Water District
- 6 (24) Metropolitan Water District of Southern California
- 7 (25) Mojave Water Agency
- 8 (26) Napa County Flood Control and Water Conservation District
- 9 (27) Oak Flat Water District
- 10 (28) Oro Loma Water District
- 11 (29) Pacheco Water District
- 12 (30) Palmdale Water District
- 13 (31) Panoche Water District
- 14 (32) Patterson Irrigation District
- 15 (33) Reclamation District 1606
- 16 (34) San Diego County Water Authority
- 17 (35) San Bernardino Valley Municipal Water District
- 18 (36) San Benito County Water District
- 19 (37) San Luis & Delta Mendota Water Authority
- 20 (38) Santa Clara Valley Water District
- 21 (39) Tehama Colusa Canal Authority
- 22 (40) Tranquility Irrigation District
- 23 (41) Tulare Lake Basin Water Storage District
- 24 (42) West Stanislaus Irrigation District
- 25 (43) West Side Irrigation District
- 26 (44) Westlands Water District

27 16. Without conceding that any of the following entities are recipients of the DWB approval
 28 under Public Resources Code section 21167.6.5 or necessary or indispensable parties under Code of

1 Civil Procedure section 389, Petitioners name the following entities as Real Parties in Interest
2 because Petitioners are informed and believe that they claim an interest in the DWB program as
3 potential buyers of water:

- 4 (1) East Bay Municipal Utility District
- 5 (2) Walnut Valley Water District
- 6 (3) Castaic Lake Water Authority

7 17. Real Parties in Interest DOES 51 through 100, inclusive, are sued under fictitious names.
8 Petitioners are ignorant of the true names and capacities, whether individual, corporate,
9 governmental, or otherwise, of the Real Parties in Interest named in this Petition as DOES 51 through
10 100, inclusive, and therefore sue these Real Parties in Interest by these fictitious names. Petitioners
11 will amend this Petition to allege their true names and capacities when ascertained. Petitioners are
12 informed and believe, and based thereon allege, that the rights and interests of each of these
13 fictitiously named Real Parties in Interest would be affected by the granting of the relief Petitioners
14 seek in this proceeding.

15 FACTUAL BACKGROUND

16 18. The State Water Project ("SWP") is a system of reservoirs, canals, and pumps appended to
17 the Feather, Sacramento, San Joaquin and other rivers and Delta and operated by DWR to provide
18 water to water supply agencies throughout the state.

19 19. The Central Valley Project ("CVP") is a similar system of reservoirs, canals, and pumps
20 appended to the Sacramento and San Joaquin Rivers and Delta and operated by the federal Bureau
21 of Reclamation ("Reclamation"), also to provide water to water supply agencies throughout the state.

22 20. DWR's and Reclamation's coordinated operation of these projects is often referred to as the
23 "Coordinated Operations."

24 21. The California Environmental Water Account ("EWA") is a program to increase protection
25 for fish resources of the San Francisco Bay-Delta estuary and is operated by DWR and Reclamation
26 in conjunction with their "Coordinated Operations," using the same physical facilities and sources
27 of water as the SWP and CVP .

28 22. In or around January 2004, DWR and the Bureau of Reclamation approved the EWA for the

1 period 2004 through 2007 based on DWR's certification and Reclamation's approval of a Final
2 Environmental Impact Statement / Environmental Impact Report ("EIS/EIR") for the EWA ("2004
3 EWA EIR"), which evaluated the effects of the EWA from 2004 to 2007.

4 23. In or around March 2008, DWR and Reclamation issued a Final Supplemental EIS/EIR to the
5 EWA Final EIS/EIR ("2008 Supplemental EWA EIR"). The 2008 Supplemental EWA EIR
6 evaluated the effects of extending the EWA from 2008 through 2011. DWR has not certified and
7 Reclamation has not approved the 2008 Supplemental EWA EIR, and neither agency has approved
8 the extension of the EWA from 2008 through 2011.

9 24. In or around 2004, the U.S. Fish & Wildlife Service ("USFWS") issued a biological opinion
10 on the effects of the Coordinated Operations on Delta smelt, a species of fish listed as threatened
11 under the federal Endangered Species Act ("ESA"), and its designated critical habitat ("2004 Delta
12 smelt BO"). In response to a lawsuit challenging this opinion, USFWS reinstated consultation under
13 Section 7 of the ESA and issued a redrafted opinion in 2005 ("2005 Delta smelt BO").

14 25. On or about May 25, 2007, the United States District Court for the Eastern District of
15 California (Judge Oliver W. Wanger presiding) issued an order in *Natural Resources Defense*
16 *Council, et al. v. Kempthorne*, 1:05-cv-1207 OWW GSA (E.D. Cal. 2007), finding that the 2005
17 Delta smelt BO violated the requirements of the ESA, and ordered the preparation of a new biological
18 opinion. On or about December 14, 2007, Judge Wanger also issued an interim order curtailing
19 operations at CVP and SWP export facilities to protect Delta smelt until a new biological opinion was
20 completed. This order is one of the sources of the "judicially mandated operational curtailments"
21 referenced in DWR's Draft and Final Addendums (defined hereinafter) for the DWB.

22 26. In or around December 2008, the USFWS issued an updated biological opinion for the
23 Coordinated Operations and Delta smelt ("2008 Delta smelt BO").

24 27. In or around 2004, the National Marine Fisheries Service ("NMFS") issued a biological
25 opinion on the effects of the Coordinated Operations on the Sacramento River winter-run Chinook
26 salmon, the threatened Central Valley spring-run Chinook salmon, and the threatened Central Valley
27 steelhead, three species of fish listed as endangered or threatened under the ESA ("2004 salmonid
28 BO").

1 28. On or about April 16, 2008, the United States District Court for the Eastern District of
2 California (Judge Oliver W. Wanger presiding) issued a Memorandum Decision and Order on the
3 Cross-Motions for Summary Judgment filed in *PCFFA et al. v. Gutierrez et al.*,
4 1:06-cv-245-OWW-GSA (E.D. Cal. 2008), finding that the 2004 salmonid BO violated the
5 requirements of the ESA and ordering that a new biological opinion be issued. An evidentiary
6 hearing followed, resulting in a Remedies Ruling on or about July 18, 2008, which concluded that
7 the court needed further evidence to consider Plaintiffs' proposed restrictions on CVP/SWP
8 operations. On or about October 21, 2008, Judge Wanger issued a ruling concluding that "the three
9 [listed salmonid] species are unquestionably in jeopardy Project [Coordinated] operations through
10 March 2009 will appreciably increase jeopardy to the three species."

11 29. On or about January 15, 2009, NMFS issued an updated draft biological opinion (dated
12 December 11, 2008) for the Coordinated Operations and listed salmonids ("2008 salmonid BO").

13 30. On or about December 17, 2008, DWR released a document entitled "Addendum to the
14 Environmental Water Account Environmental Impact Statement/Environmental Impact Report"
15 ("Draft Addendum") for a 30-day public comment period. This Draft Addendum described a project
16 entitled the "2009 Drought Water Bank" that purported to consist of "three minor changes" to the
17 EWA.

18 31. The Draft Addendum describes the EWA as follows:

19 The EWA is an existing and ongoing CalFED program that seeks to increase
20 protection to the fish resources of the Bay-Delta estuary beyond the protections
21 afforded by a regulatory baseline identified in the 2000 ROD for the CalFED program
22 through operational curtailments of State Water Project (SWP) and Central Valley
23 Project (CVP; collectively Project) operations beyond that baseline at no net cost to
24 the Project deliveries and supply.

25 32. The three proposed changes to the EWA discussed in the Draft Addendum are: "1. Change
26 in giant garter snake mitigation in response to the Draft USFWS Biological Opinion 2. Change in
27 the areas from which water may be purchased and 3. Change in the areas to which water may be
28 delivered."

33. The Draft Addendum also noted a new purpose for the DWB, stating:

The 2009 Drought Water Bank (DWB) thus will be the mechanism for acquiring and
transferring water to replace Project supplies lost and that will be lost due to the

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judicially mandated operational curtailments, aggravated by the conditions of drought.

34. On or about January 16, 2009, Petitioners BUTTE ENVIRONMENTAL COUNCIL and CALIFORNIA SPORTFISHING PROTECTION ALLIANCE submitted written comments to DWR objecting to the DWB Project and specifying the significant environmental effects of the Project due to the new areas described in the DWB Draft Addendum from which water may be purchased for delivery to affected water agencies that are not described in the 2004 EWA EIR or 2008 Supplemental EWA EIR, including new sources of groundwater that are vulnerable to overdraft.

35. Also on or about January 16, 2009, counsel for Petitioner BUTTE ENVIRONMENTAL COUNCIL submitted a comment letter to DWR on BEC’s behalf objecting to DWR’s approval of the Drought Water Bank on grounds that neither the Draft Addendum that DWR circulated for public comment on December 17, 2008 nor the 2008 Supplemental EWA EIR comply with the requirements of CEQA.

36. On or about February 27, 2009, the Governor of California issued a Proclamation declaring a State of Emergency due to Water Shortage, finding: “[T]he drought conditions and water delivery limitations identified in my prior Executive Order and Emergency Proclamation still exist, and have become worse in this third year of drought, creating emergency conditions not just in the Central Valley, but throughout the State of California, as the adverse environmental, economic, and social impacts of the drought cause widespread harm to people, businesses, property, communities, wildlife and recreation.” (See Exhibit 1.)

37. On or about March 4, 2009, DWR issued a final “Addendum to the Environmental Water Account Environmental Impact Statement/Environmental Impact Report Re: 2009 Drought Water Bank Transfers” (“Final Addendum”). The Final Addendum made only minor changes to the Draft Addendum and repeated the nature and purpose of the DWB as stated in the Draft Addendum.

38. The Final Addendum states that it “has been prepared as part of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) (2004) and Supplement (2008) for the Environmental Water Account (EWA)” and that the “three proposed changes” do not involve “new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or substantial changes in the circumstances under which the project will be

1 implemented.”

2 39. On or about March 9, 2009, DWR, with concurrence from the California Secretary for Natural
3 Resources, filed a Notice of Exemption (“NOE”) pursuant to CEQA, at Public Resources Code
4 sections 21108(b) and 21167(d), for its approval of the DWB. The NOE claims the Project is exempt
5 from CEQA pursuant to the “emergency” exemptions codified at Public Resources Code section
6 21080, subdivision (b), paragraphs (3) and (4), and section 21172, and CEQA Guidelines section
7 15269, subdivisions (a), (b), and (c) and states: “The Project is subject to the Governor’s Proclamatin
8 [sic] of a State of Emergency of February 27, 2009 (attached), among whose purposes is to protect
9 the safety of persons and property from the natural disaster created [sic] by the critical drought
10 conditons [sic] currently existing in the State. Section 17 of said Proclamation directs that CEQA
11 exemptions under these sections as well as CCR title 14, section 15269(c) shall apply. The Secretary
12 for the Natural Resources Agency has determined that the 2009 Drought Water Bank falls within this
13 exemption (see attached).” (A true and correct copy of this NOE is attached hereto as Exhibit 1.)

14 **JURISDICTION AND VENUE**

15 40. This Petition is brought pursuant to Code of Civil Procedure section 1084 et seq., and Public
16 Resources Code sections 21168 and 21168.5. This Court has jurisdiction over these claims.

17 41. Venue is proper in this Court pursuant to Code of Civil Procedure section 401, subsection (1),
18 which provides that whenever an action against a state agency may be commenced in the County of
19 Sacramento, the same may be commenced and tried in any city or city and county of this state in
20 which the Attorney General has an office. This action may be commenced in the Superior Court for
21 the County of Sacramento because Respondents DWR, Resources, and the Governor are state
22 agencies with their principal offices in the County of Sacramento, and because Government Code
23 section 955 provides that actions against state agencies may be removed by the Attorney General to
24 Sacramento County. Thus, since an action against Respondents may be commenced in the County
25 of Sacramento, it may also be commenced in any county in which the Attorney General has an office.
26 Since the Attorney General has a general office in Alameda County in the City of Oakland, venue
27 for this case is proper in Alameda County.

28 42. Venue is also proper in this Court pursuant to Code of Civil Procedure section 393, subsection

1 (a), which provides that the county in which the cause, or some part of the cause, arose, is the proper
2 county for trial of an action to recover a penalty or forfeiture imposed by statute. Several Delta
3 pumps necessary to implement the DWB Project, thereby giving rise to the harm described herein,
4 are located in Alameda County.

5 **STANDING**

6 43. Petitioners have a direct and beneficial interest in Respondents' full and complete compliance
7 with CEQA and other legal requirements applicable to the DWB Project. This beneficial interest
8 arises, *inter alia*, in that Petitioner BUTTE ENVIRONMENTAL COUNCIL is made up of over 850
9 citizens, residents, landowners, businesses, and taxpayers of Butte County, whose rivers, streams,
10 lakes, reservoirs and groundwater will be affected by the DWB Project. The State Water Project's
11 watershed encompasses the mountains and waterways around the Feather River that lead into Lake
12 Oroville in Butte County. Indeed, Lake Oroville – the second largest reservoir in California – is the
13 SWP's official start and a part of a complex that includes three power plants, a forebay, and an
14 afterbay. Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE has approximately
15 2,000 members who live, recreate, and work in and around waters of the State of California, including
16 waterways throughout the Sierra Nevada, Central Valley, and the Sacramento-San Joaquin River
17 Delta Estuary, and represents prominent fishing organizations and individual members across the
18 state committed to conserving the state's fishery resources and habitat. And Petitioner
19 CALIFORNIA WATER IMPACT NETWORK's goal is to ensure that publicly-owned water projects
20 in California are operated in the public interest, including reasonable urban and agricultural uses as
21 well as environmental values, in order to achieve a sustainable water future. As a result, Petitioners
22 will be adversely affected if Respondents fail to comply with the above-referenced legal requirements
23 via such impacts as damage to Petitioners' members', supporters', and benefactors' land and
24 environmental resources including fish and associated wildlife in rivers, streams, lakes, and reservoirs
25 in California, and in that Petitioners' members, supporters, and benefactors are residents and
26 taxpayers of the State of California. Petitioners also have standing in that the purposes of this
27 proceeding and action include the enforcement of public duties for which the public interest will
28 suffer if such duties are not performed, including, *inter alia*, the duties to protect the environment,

1 and in that Petitioners have a lengthy, demonstrated history of interest and involvement in protecting
2 the environmental resources of the State of California.

3 44. Respondents have a mandatory duty to comply with CEQA and other legal requirements
4 applicable to the DWB Project. Petitioners have the right to enforce these mandatory duties.
5 Petitioners have no other plain, speedy, and adequate remedy at law, and will suffer irreparable injury
6 unless they receive the relief requested in this Petition.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 45. To the extent that any administrative process existed for Petitioners to raise issues included
9 in this Petition and to object to DWR's or Resources' approval of this Project, Petitioners did so.
10 Petitioners have thus exhausted all available administrative remedies with respect to these matters.

11 **NOTICE OF COMMENCEMENT OF CEQA PROCEEDING**

12 46. On April 10, 2009, Petitioners served Respondents DWR and Resources, and on April 13,
13 2009, Petitioners served Respondent Governor with notice of Petitioners' intention to commence this
14 action. A copy of these notices, together with proofs of service, is attached hereto as Exhibit 2 and
15 incorporated herein by this reference. By servicing these notices, Petitioners complied with Public
16 Resources Code section 21167.5.

17 **PRIVATE ATTORNEY GENERAL**

18 47. This proceeding involves enforcement of important rights affecting the public interest.
19 Issuance of the relief requested in this Petition will confer a substantial benefit on the public,
20 including citizens, residents, businesses, and taxpayers of the State of California, and will result in
21 the enforcement of important public rights by requiring Respondents to comply with CEQA and other
22 legal requirements applicable to the proposed DWB Project, by voiding the Project approval, and by
23 prohibiting Respondents and Real Parties from taking further actions with respect to the DWB Project
24 until they have complied with those legal requirements.

25 48. Petitioners bring this action as private attorney general pursuant to Code of Civil Procedure
26 section 1021.5. The necessity and financial burden of enforcement of these public rights entitle
27 Petitioners to an award of reasonable attorneys' fees pursuant to that section.

28 //

FIRST CAUSE OF ACTION
(Mandamus Against Respondents DWR, Resources, and
the Governor for Violations of CEQA)

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3 49. Petitioners hereby reallege and incorporate by reference into this First Cause of Action all of
4 the preceding and succeeding paragraphs of this Petition as though fully set forth herein.

5 50. Petitioners allege this First Cause of Action against DWR and Resources. Without conceding
6 that the Governor approved the DWB, which Petitioners contest, in the event that any party contends
7 that the Governor approved the DWB, Petitioners also allege this First Cause of Action against the
8 Governor.

9 51. Respondents are subject to CEQA because they are state agencies, and state agencies must
10 comply with CEQA prior to approving a public project. CEQA applies to the DWB Project as a
11 public project. In approving the DWB Project, Respondents had discretionary authority over the
12 Project. Consequently, prior to approving the DWB Project, Respondents were required to comply
13 with CEQA.

14 52. CEQA imposes a three-tiered structure of environmental review of public projects. If a
15 project does not fall within a statutory exemption, then CEQA requires preparation of either an
16 Environmental Impact Report or a Negative Declaration (depending on the potential significance of
17 environmental impacts). If a project falls within a statutory exemption, the preparation of an
18 Environmental Impact Report or a Negative Declaration is not required.

19 53. Respondents determined that the DWB Project was statutorily exempt from further CEQA
20 review, relying on the "emergency" exemptions provided in Public Resources Code section 21080,
21 subdivision (b), paragraphs (3) and (4), and section 21172, and CEQA Guidelines section 15269,
22 subdivisions (a), (b), and (c). This determination was erroneous because those exemptions are
23 inapplicable to the DWB Project for the reasons noted below. Respondents therefore prejudicially
24 abused their discretion by failing to proceed in the manner required by law and by failing to support
25 their conclusions with substantial evidence in the record.

26 54. An agency's use of an emergency exemption must meet "close judicial scrutiny of each
27 element of the Legislature's detailed definition of 'emergency.'" (*Western Mun. Water Dist. v.*
28 *Superior Court* (1986) 187 Cal.App.3d 1104, 1113; quoted also in *Calbeach Advocates v. City of*

1 *Solano Beach* (2002) 103 Cal.App.4th 529, 536.)

2 **Count 1**
3 **(The DWB Project Is Not Exempt from CEQA Under Section 21080(b)(4).)**

4 55. CEQA section 21080(b)(4) exempts from CEQA review “[s]pecific actions necessary to
5 prevent or mitigate an emergency.” The related CEQA Guidelines section 15269(c) provides:
6 “Specific actions necessary to prevent or mitigate an emergency” are emergency projects and
7 “exempt from the requirements of CEQA.” Guidelines section 15269(c) excludes from the
8 exemption “long-term projects undertaken for the purpose of preventing or mitigating a situation that
9 has a low probability of occurrence in the short-term.”

10 56. Under CEQA, an “emergency” is defined as: “a sudden, unexpected occurrence, involving
11 a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage
12 to, life, health, property, or essential public services. ‘Emergency’ includes such occurrences as fire,
13 flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident,
14 or sabotage.” (Pub. Resources Code, § 21060.3; 14 Cal. Code Regs., § 15360.)

15 57. Respondents’ use of section 21080(b)(4) to avoid CEQA review of the DWB Project is a
16 prejudicial abuse of discretion because this Project does not meet the statutory requirements for
17 invoking this exemption.

18 58. Neither the “judicially mandated operational curtailments” or “drought” constitute a “sudden,
19 unexpected occurrence” because the events leading to the current water conditions in California have
20 been gradual. Indeed, the Governor’s Proclamation recognizes that “the drought conditions ... have
21 become worse in this third year of drought, creating emergency conditions” (Exhibit 1, p. 1
22 [emphasis added].) Further, a drought is not similar to the examples of natural disasters listed in
23 CEQA’s definition of “emergency,” i.e., “fire, flood, earthquake, or other soil or geologic
24 movements,” which are all sudden, one-time events. Neither the Governor’s Proclamation nor the
25 Final Addendum refers to any sudden change in the severity of the drought over the last three years.
26 On the contrary, a DWR publication entitled “Recent California Drought” explains that “unlike
27 earthquakes, fires, or floods, drought onset is slow, allowing time for water suppliers to implement
28 preparedness and response actions to mitigate reductions in normal supplies.”

1 59. Neither the “judicially mandated operational curtailments” or “drought” involve “a clear and
2 imminent danger, demanding immediate action.” The water conditions in California – both at the
3 time of the Governor’s Proclamation and at the time Respondents signed the Notice of Exemption
4 – do not present a “clear and imminent danger” demanding “immediate” action absent environmental
5 review. (See *Western Mun. Water Dist. v. Superior Court*, *supra*, 187 Cal.App.3d at 1111 [project
6 to drill and release groundwater under city to reduce the risk of liquefaction during an earthquake did
7 not satisfy the imminence requirement of section 21060.3: “The theory behind [emergency]
8 exemptions is that if a project arises for which the lead agency simply cannot complete the requisite
9 paperwork within the time constraints of CEQA, then pursuing the project without complying with
10 the EIR requirement is justifiable. For example, if a dam is ready to burst or a fire is raging out of
11 control and human life is threatened as a result of delaying a project decision, application of the
12 emergency exemption would be proper.”].) While the 2009 water year may be a “dry” or “low
13 water” year compared with historical averages, that classification does not rise to the level of an
14 “emergency” for purposes of avoiding environmental review under CEQA. In *Western Mun. Water
15 Dist. v. Superior Court*, *supra*, the court explains the standard for “imminence” as follows:

16 Although [the agency] urges that “CEQA, including its environmental impact report
17 requirements, shall not apply to specific actions necessary to prevent or mitigate
18 earthquakes or other soil or geological movements,” this interpretation is unsupported
19 by the text of the exemption. Such a construction completely ignores the limiting
20 ideas of “sudden,” “unexpected,” “clear,” “imminent” and “demanding immediate
21 action” expressly included by the Legislature and would be in derogation of the canon
22 that a construction should give meaning to each word of the statute. [Citation.]
23 Moreover, in the name of “emergency” it would create a hole in CEQA of fathomless
24 depth and spectacular breadth. Indeed, it is difficult to imagine a large-scale public
25 works project, such as an extensive deforestation project or a new freeway, which
26 could not qualify for emergency exemption from an EIR on the grounds that it might
27 ultimately mitigate the harms attendant on a major natural disaster. The result could
28 hardly be intended by the careful drafting of the Legislature, and is unmistakably
opposed to the policy of construing CEQA to afford the maximum possible protection
of the environment. [Citation.]

24 (187 Cal.App.3d at 1111-1112.) Likewise here, if Respondents were to apply emergency exemptions
25 to all water projects in “dry” years in California, the agencies would conduct environmental review
26 on only a fraction of their projects. Such a sweeping interpretation of CEQA would be contrary to
27 the purpose of CEQA and would subvert the rationale for CEQA’s “emergency” exemptions.

28 60. Therefore, Respondents prejudicially abused their discretion in finding the Project exempt

1 under CEQA section 21080(b)(4) by failing to proceed in the manner required by law and by failing
2 to support the decision with substantial evidence.

3 **Count 2**
4 **(The DWB Project Is Not Exempt from CEQA Under Sections 21080(b)(3) or 21172.)**

5 61. CEQA section 21080(b)(3) exempts from CEQA review “[p]rojects undertaken, carried out,
6 or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities
7 damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency
8 has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of
9 Division 1 of Title 2 of the Government Code.” (See also Pub. Resources Code, § 21172; 14 Cal.
Code Regs., § 15269(a).)

10 62. Respondents’ use of section 21080(b)(3) to avoid CEQA review of the DWB Project is a
11 prejudicial abuse of discretion because this Project does not meet the statutory requirements for
12 invoking this exemption.

13 63. The DWB Project does not “maintain, repair, restore, demolish, or replace” property or
14 facilities affected by the proclaimed drought. As stated above, DWR defines the DWB Project as
15 “the mechanism for acquiring and transferring water to replace [SWP and CVP] supplies lost and that
16 will be lost due to the judicially mandated operational curtailments, aggravated by the conditions of
17 drought.” (Final Addendum, p. 3 [emphasis added].)

18 64. To the extent the DWB Project purports to “replace” water supplies “lost” as a result of
19 “judicially mandated operational curtailments,” such water supplies:

- 20 (1) are not “damaged or destroyed” because they are merely transferred to other uses;
21 (2) are not lost “as a result of a disaster” because “judicially mandated operational
22 curtailments” are not a “disaster” as proclaimed by the Governor; and
23 (3) are not “property” because Real Parties who are potential buyers of DWB water
24 transfers have no property rights in water delivered by the DWR or Bureau of Reclamation.

25 65. To the extent the DWB Project purports to “replace” water supplies “lost” as a result of
26 “drought,” such water supplies:

- 27 (1) are not “damaged or destroyed” because they are merely transferred to other uses;
28

1 (2) are not lost “as a result of a disaster” because the “conditions of drought” are not a
2 “disaster” as proclaimed by the Governor; and

3 (3) are not “property” because Real Parties who are potential buyers of DWB water
4 transfers have no property rights in water delivered by the DWR or Bureau of Reclamation

5 66. The Governor’s Proclamation speaks of “emergency conditions” and below-average
6 precipitation and water storage, but not of a “disaster.” The Proclamation calls for measures to
7 prepare for or avert a disaster if drought conditions continue. DWR’s “2009 Drought Water Bank
8 Overview” document also speaks of “the potential [for 2009] to be one of the most severe drought
9 years” and DWR’s work on “implementing a number of actions now in preparation for a potentially
10 dry 2009 and beyond.” This language reflects a developing and ongoing crisis – not a disaster.
11 Indeed, “state of emergency” is defined in the Government Code as “conditions of disaster or of
12 extreme peril to the safety of persons and property.” (Gov. Code, § 8558(b).) Here, the Proclamation
13 specifically uses the “extreme peril” language, but does not once include the term “disaster.” Since
14 the section 21080(b)(3) exemption is only appropriate to respond to the effects of disasters,
15 Respondents’ reliance on the exemption here is an abuse of discretion.

16 67. Economic hardship is not a “disaster” for purposes of CEQA section 21080(b)(3). (See
17 *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1267-1268.) In
18 describing the “emergency conditions” justifying a declaration of a state of emergency, the
19 Governor’s Proclamation focuses heavily on the economic hardship caused by the drought in terms
20 of lost agricultural revenues and lost jobs. (See Exhibit 1.) Respondents applied the “emergency”
21 exemption to the DWB Project pursuant to the Governor’s Proclamation; thus, the exemption is based
22 primarily on the adverse economic effects of the drought, which is not appropriate for a section
23 21080(b)(3) exemption.

24 68. Therefore, Respondents prejudicially abused their discretion in finding the Project exempt
25 under CEQA sections 21080(b)(3) and 21172 by failing to proceed in the manner required by law and
26 by failing to support the decision with substantial evidence.

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Count 3
(Respondents Cannot Rely on the March 4, 2009 “Addendum” to Comply with CEQA.)

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2 69. In the alternative, if Respondents argue that they complied with CEQA in approving the DWB
3 by preparing the Final Addendum, Respondents abused their discretion by failing to proceed in the
4 manner required by law and by finding that the 2009 DWB does not have the potential to cause new
5 significant effects or increase the severity of previously identified significant effects.

6 70. CEQA does not authorize the use of an addendum to a previous EIR to evaluate whether a
7 project may have new or more severe significant effects on the environment where the previous EIR
8 is not certified. (Pub. Resources Code, § 21166, 14 Cal. Code Regs., §§ 15162, 15164.) Here, DWR
9 has not certified the 2008 Supplemental EWA EIR.

10 71. CEQA does not authorize the use of an addendum to a previous EIR to evaluate whether a
11 project may have new or more severe significant effects on the environment where the previous EIR
12 was prepared for a different project. (*Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th
13 1288.) Here, The DWB and the EWA are different “projects” under CEQA.

14 72. DWR’s Final Addendum attempts to “use an earlier EIR prepared in connection with an
15 earlier project to apply to a later project” as described in CEQA Guidelines section 15153, but in
16 doing so, DWR failed to follow the specific procedures and make the specific findings required under
17 CEQA Guidelines section 15153.

18 73. The Final Addendum fails to evaluate the environmental effects of exporting water from areas
19 not included in the EWA EIR or 2008 Supplemental EWA EIR. This omission is particularly
20 egregious with respect to many sources of groundwater that are currently vulnerable to overdraft.

21 74. Changed circumstances and new information regarding the threatened Delta smelt
22 demonstrate that the DWB will contribute to new significant adverse impacts and/or increase the
23 severity of previously identified environmental impacts. Therefore, Respondents must prepare either
24 a new EIR or at least a subsequent or supplemental EIR. (Pub. Resources Code, § 21166; 14 Cal.
25 Code Regs., §§ 15162, 15164.) While the 2004 EWA EIR and the 2008 Supplemental EWA EIR
26 determined that impacts on Delta smelt would be less than significant, Respondents’ reliance on these
27 determinations in approving the DWB Project is erroneous for the following reasons:
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(1) The 2004 EWA EIR only applied to operations through the end of 2007. Therefore, its conclusion that impacts on Delta smelt were less than significant expired in 2007 of its own terms.

(2) The 2004 EWA EIR determined that impacts on Delta smelt would be less than significant based in part on assumed EWA compliance with the USFWS’s 2004 Delta smelt BO. But USFWS reinitiated consultation under the ESA and issued a redrafted opinion in 2005 (“2005 Delta smelt BO”), which the Federal District Court ruled failed to comply with the ESA. As a result, the conclusion of the 2004 EWA EIR that impacts on Delta smelt were less than significant was rendered obsolete at that time.

(3) The conclusion of the 2008 Supplemental EWA EIR that impacts on Delta smelt would be less than significant, which is intended to apply only to operations from the beginning of 2008 through the end of 2011, is irrelevant because DWR has not certified that document and the Bureau of Reclamation has not adopted it.

(4) Assuming *arguendo* that the 2008 Supplemental EWA EIR was certified, its findings regarding Delta smelt became obsolete in December 2008 when USFWS issued the 2008 Delta smelt BO, which analyzes the impacts of the Coordinated Operations – including the EWA – on the threatened Delta smelt and its designated critical habitat. The 2008 Delta smelt BO concludes that operation of the EWA has and will continue to have significant adverse effects on Delta smelt and their habitat. The mechanisms of this effect are: (i) adding more water to Delta flows that are pulled into the CVP and SWP pumps entrains more smelt and their plankton prey; and (ii) adding more stored, and thus relatively non-turbid water, to Delta flows in the summer months decreases turbidity of the water in smelt habitat areas, which increases smelt visibility to predators.

(5) After finding that the Coordinated Operations will cause jeopardy to the species and harm to its critical habitat, the 2008 Delta smelt BO finds that “[t]o survive and recover, delta smelt need: (d) ... a reduction in entrainment of adult and juvenile delta smelt at CVP/SWP pumping facilities, over and above reductions achieved under the VAMP and the EWA, to increase the abundance of the spawning adult population and the potential for recruitment of

1 juveniles into the adult population.”

2 (6) The 2008 Delta smelt BO ultimately finds that the only way to avoid jeopardy to the
3 species and adverse modification of its habitat is to implement a series of “reasonable and
4 prudent alternatives” detailed in the BO. The BO provides five reasonable and prudent
5 measures, stating:

6 The following actions are necessary to ensure that implementation of the long
7 term operations of the CVP/SWP does not appreciably reduce the likelihood
8 of both the survival and recovery of the delta smelt and does not preclude the
9 intended conservation role of its critical habitat through: 1) preventing/reducing entrainment of delta smelt at Jones and Banks; 2)
10 providing adequate habitat conditions that will allow the adult delta smelt to
11 successfully migrate and spawn in the Bay-Delta; 3) providing adequate
12 habitat conditions that will allow larvae and juvenile delta smelt to rear; and
13 4) providing suitable habitat conditions that will allow successful recruitment
14 of juvenile delta smelt to adulthood. In addition, it is essential to monitor delta
15 smelt abundance and distribution through continued sampling programs
16 through the IEP.

17 (7) The DWB proposal to obtain and deliver replacement water supplies threatens to
18 reinstate the adverse effects on smelt that Judge Wanger’s order and the 2008 Delta smelt BO
19 are designed to avoid, because there is no evidence that the EWA and/or the DWB includes
20 the reasonable and prudent alternatives described in the 2008 Delta smelt BO. As a result,
21 the operation of the EWA and/or the DWB is likely to have newly identified significant
22 adverse effects on Delta smelt or more severe effects previously identified as significant.
23 Therefore, an addendum is not allowed and a supplemental or subsequent EIR is required.
24 (See Pub. Resources Code, § 21166; 14 Cal. Code Regs., §§ 15162, 15164.)

25 75. Changed circumstances and new information regarding listed salmonids and other
26 anadromous fish demonstrate that the DWB will contribute to new significant adverse impacts and/or
27 increase the severity of previously identified environmental impacts. Therefore, Respondents must
28 prepare either a new EIR or at least a subsequent or supplemental EIR. (Pub. Res. Code, § 21166; 14
Cal. Code Regs., §§ 15162, 15164.) While the 2004 EWA EIR and the 2008 Supplemental EWA
EIR determined that impacts on listed salmonids and other anadromous fish would be less than
significant, Respondents’ reliance on these determinations in approving the DWB is erroneous for
the following reasons:

1 (1) The 2004 EWA EIR only applied to operations through the end of 2007. Therefore,
2 its conclusion that impacts on listed salmonids and other anadromous fish were less than
3 significant expired in 2007 of its own terms.

4 (2) The 2004 EWA EIR determined that impacts on listed salmonids and other
5 anadromous fish would be less than significant based in part on assumed EWA compliance
6 with the NMFS's 2004 salmonid BO, which the Federal District Court later ruled failed to
7 comply with the ESA. As a result, the conclusion of the 2004 EWA EIR that impacts on
8 listed salmonids and other anadromous fish were less than significant was rendered obsolete
9 at that time.

10 (3) The conclusion of the 2008 Supplemental EWA EIR that impacts on listed salmonids
11 and other anadromous fish would be less than significant, which is intended to apply only to
12 operations from the beginning of 2008 through the end of 2011, is irrelevant because DWR
13 has not certified that document and the Bureau of Reclamation has not adopted it.

14 (4) Assuming *arguendo* that the 2008 Supplemental EWA EIR was certified, its findings
15 regarding listed salmonids and other anadromous fish became obsolete in January 2009 when
16 NMFS issued the 2008 salmonid BO, which analyzes the impacts of the Coordinated
17 Operations – including the EWA – on listed salmonids and other anadromous fish and their
18 designated critical habitat. The 2008 salmonid BO concludes that operation of the EWA has
19 and will continue to have significant adverse effects on listed salmonids and other
20 anadromous fish and their habitat, stating:

21 After reviewing the best scientific and commercial information available, the
22 current status of the species, the environmental baseline for the action area,
23 the effects of the proposed action, and cumulative effects, it is NMFS' draft
24 Opinion that the long-term CVP and SWP OCAP, as proposed, is not likely
25 [to] adversely affect Central California Coast steelhead and their designated
26 critical habitat. In addition, the long-term CVP and SWP OCAP is likely to
27 jeopardize the continued existence of Sacramento River winter-run Chinook
28 salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead,
and Southern DPS of North American green sturgeon. The long-term CVP and
SWP OCAP is likely to destroy or adversely modify critical habitat for
Sacramento River winter-run Chinook salmon, Central Valley spring-run
Chinook salmon, and Central Valley steelhead, and proposed critical habitat
for the Southern DPS of green sturgeon. Finally, the consultation on the effect
of the proposed action on Southern Resident killer whales is ongoing.
Therefore, NMFS has not reached a conclusion for that species.

1 (5) Thus, operation of the EWA and/or DWB is likely to have newly identified significant
2 adverse effects on listed salmonids and other anadromous fish or more severe effects
3 previously identified as significant. Therefore, an addendum is not allowed and a
4 supplemental or subsequent EIR is required. (See Pub. Resources Code, § 21166; 14 Cal.
5 Code Regs., §§ 15162, 15164.)

6 76. The DWB Project proposes to delete or modify mitigation measures previously adopted as
7 a result of the EWA EIR process to substantially reduce significant impacts on the Giant Garter
8 Snake, a species of wildlife listed as endangered under the ESA, but without showing they are
9 infeasible, in violation of CEQA. (See *Napa Citizens for Honest Government v. Napa County Board*
10 *of Supervisors* (2001) 91 Cal.App.4th 342, 359.) DWR proposes to delete the 160-acre maximum
11 size for “idled block sizes” for rice fields left fallow rather than flooded and to substitute for it a 320-
12 acre maximum. DWR also proposes to delete the mitigation measure excluding Yolo County east
13 of Highway 113 from the areas where rice fields may be left fallow rather than flooded, except in
14 three specific areas. DWR previously required these mitigation measures as part of the EWA
15 approval specifically to reduce potentially significant effects of the EWA on the Giant Garter Snake
16 to less than significant. The DWB Final Addendum does not contend, much less support a conclusion
17 with facts, that these mitigation measures are no longer feasible. Nor does the Addendum provide
18 a legitimate reason for doing so. Therefore, deleting the mitigation measures returns the CEQA
19 analysis to the stage where there is substantial evidence supporting a fair argument that the project
20 will have significant adverse effects. Consequently, preparation of an EIR is required, and
21 Respondents prejudicially abused their discretion by instead using an addendum.

22 77. The Final Addendum indicates a number of groundwater sources located in areas the DWB
23 could access but which are not described in the 2004 EWA EIR or 2008 Supplemental EWA EIR.
24 Moreover, available data suggests that these groundwater sources are vulnerable to overdraft.
25 Therefore, any project, including the DWB, that proposes to pump more groundwater from these
26 sources to meet the needs of water users in other locations has the potential to cause significant
27 adverse effects on these resources. At a minimum, Respondents must prepare a CEQA document that
28 describes the environmental setting of these new areas and assesses the likely impacts on them from

1 accessing water in these settings. Respondents' use of an addendum without assessing these new
2 areas is an abuse of discretion. (See Pub. Resources Code, § 21166; 14 Cal. Code Regs., §§ 15162,
3 15164.)

4 78. The 2008 Supplemental EWA EIR must be recirculated for public comment due to the
5 availability of significant new information generated by the 2008 Delta smelt BO and the 2008
6 salmonid BO discussed above. The 2008 Supplemental EWA EIR concludes that effects on Delta
7 smelt and listed salmonids and other anadromous fish will be either beneficial or less than significant
8 (p. ES-9, 10). The 2008 Draft Supplemental EWA EIR also states that the 2005 Delta smelt BO and
9 2004 salmonid BO were issued after completion of the 2004 EWA EIR: "These BOs established
10 non-discretionary terms and conditions to implement reasonable and prudent measures as part of the
11 Section 7 consultation. The agencies have reinitiated consultation on these BOs, and it is not known
12 how these terms and conditions might change. For purposes of this analysis it is assumed that the
13 current terms and conditions will be carried forward into the future" (pp. 4-5). The assumption that
14 "current terms and conditions will be carried forward into the future" is no longer valid, as the
15 Federal District Court, USFWS, and NMFS have all found these terms and conditions are not enough
16 to avoid jeopardy or adverse modification of critical habitat to listed species of fish. Therefore,
17 Respondents' reliance on the Final Addendum without recirculating the 2008 Supplemental EWA
18 EIR is an abuse of discretion.

19 **Count 4**
20 **(Respondents' Reliance on the 2004 and 2008 EWA EIRs Is Illegal.)**

21 79. In the alternative, if Respondents argue that they complied with CEQA in approving the DWB
22 by considering the 2004 EWA EIR and/or 2008 Supplemental EWA EIR, Respondents failed to
23 proceed in the manner required by law by not following the procedures or making the findings
24 required to "use an earlier EIR prepared in connection with an earlier project to apply to a later
25 project" in violation of CEQA Guidelines section 15153.

26 80. The Final Addendum neither describes nor incorporates by reference any part of either the
27 2004 EWA EIR or the 2008 Supplemental EWA EIR that describes the environmental setting of the
28 new areas from which water may be purchased for delivery to affected water supply agencies. Nor

1 does the Final Addendum describe or incorporate by reference any part of either EWA EIR that
2 describes the environmental impacts on these new areas from withdrawing water from them for
3 conveyance and sale elsewhere. (See 14 Cal. Code Regs., § 15153(b)(1) [“The Lead Agency shall
4 review the proposed project with an initial study, using incorporation by reference if necessary, to
5 determine whether the EIR would adequately describe: (A) The general environmental setting of the
6 project, (B) The significant environmental impacts of the project, and (C) Alternatives and mitigation
7 measures related to each significant effect.”]). Moreover, even if Respondents had made the
8 determinations required by Guidelines section 15153(b)(1), they failed to open public comment on
9 the EWA EIR as the draft EIR for the DWB and follow all of the normal procedures for certifying
10 the previous EIR as the EIR for this Project. (See 14 Cal. Code Regs., § 15153(b)(2).)

11 81. The circumstances of the DWB and EWA projects are not “essentially the same” as required
12 by Guidelines section 15153 for the same reasons they are not the same “project” discussed herein
13 (i.e., they have different purposes and they affect different geographic areas). Therefore,
14 Respondents abused their discretion by failing to prepare a new EIR for the DWB Project.

15 **SECOND CAUSE OF ACTION**
16 **(Mandamus Against DWR for Violation of Ministerial Duty to Obtain**
17 **Findings Required by Governor’s Proclamation.)**

18 82. Petitioners hereby reallege and incorporate by reference into this Second Cause of Action all
19 of the preceding and succeeding paragraphs of this Petition as though fully set forth herein.

20 83. The Governor’s Proclamation requires that the Secretary for the California Environmental
21 Protection Agency (“EPA”) and the Secretary for the California Natural Resources Agency
22 (“Resources”) make findings that all efforts taken pursuant to the Proclamation to address the drought
23 conditions (including the DWB): (a) fall within the “emergency” exemptions pursuant to CEQA
24 section 21080(b)(3) and section 21080(b)(4); (b) serve the purposes of the Proclamation to address
25 “the conditions of extreme peril”; and (c) “protect[] the public and the environment.”

26 84. The Governor’s Proclamation thus imposes a ministerial duty on DWR to obtain the findings
27 from EPA and Resources as required by the Proclamation before invoking the exemption for any
28 particular project.

85. The Secretary for the California Environmental Protection Agency did not make any findings

1 with respect to the emergency exemptions for the DWB Project as required by the Proclamation.

2 86. The Secretary for the California Natural Resources Agency did not expressly make the
3 findings required by the Proclamation, but instead responded with one word (i.e., “concur”) to
4 DWR’s request to agree “that the use of the emergency exemption by DWR and all other State and
5 local agencies for the 2009 Drought Water Bank is appropriate under the Governor’s February 27
6 Emergency Proclamation.” (See Exhibit 1.)

7 87. Therefore, DWR abused its discretion in approving the DWB Project absent EPA and
8 Resources’ explicit findings in conformance with the Governor’s Proclamation. (See *Topanga Assn.*
9 *for Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [where findings are
10 required, they must enable the courts and the public to “bridge the analytic gap between the raw
11 evidence and ultimate decision or order.”].)

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioners pray for relief as follows:

14 1. That the Court issue a peremptory writ of mandate: (1) ordering Respondents to set aside and
15 void their approval of the 2009 Drought Water Bank and to comply with the requirements of CEQA
16 and other applicable legal requirements prior to taking further actions with respect to the 2009
17 Drought Water Bank and to file a return with the Court showing compliance with the writ of
18 mandate; and (2) prohibiting Respondents and Real Parties in Interest from taking any further actions
19 with respect to the 2009 Drought Water Bank until they have complied with those legal requirements;

20 2. That, upon filing a request, the Court issue a temporary restraining order, stay, and/or
21 preliminary injunction enjoining the Real Parties in Interest from engaging in any physical activity
22 in furtherance of the 2009 Drought Water Bank while this Petition is pending;


23 3. That the Court issue a permanent injunction enjoining Real Parties in Interest from taking any
24 further actions with respect to the 2009 Drought Water Bank and from undertaking any physical
25 activity in furtherance of the 2009 Drought Water Bank unless and until legally appropriate
26 entitlement approvals for the 2009 Drought Water Bank have been granted by the appropriate
27 governmental entity or entities;

28 4. That, upon motion of Petitioners, the Court award and order Respondents and Real Parties

- 1 in Interest to pay Petitioners' reasonable attorneys' fees in connection with this proceeding;
2 5. That the Court order Respondents and Real Parties in Interest to pay Petitioners' costs of suit;
3 and
4 6. That the Court order such other and further relief as may be just and reasonable.

5 DATED: April 13, 2009

LIPPE GAFFNEY WAGNER LLP

6 
7 By: Thomas N. Lippe
8 Attorneys for Petitioners

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VERIFICATION

Butte Environmental Council et al. v. California Department of Water Resources, et al.

I, Thomas N. Lippe, declare that:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. My office is located at Lippe Gaffney Wagner LLP, 329 Bryant Street, Suite 3D, San Francisco, California. My office is the attorney of record for the Petitioners in this action.

2. Petitioners are non-profit public benefit corporations whose offices, as listed with the California Secretary of State, are located in Butte, Santa Barbara, and Yolo Counties. I make this verification on behalf of Petitioners because they are located outside of San Francisco County, the county in which I have my office.

3. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

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

Executed on this 13th day of April 2009, at San Francisco, California.



Thomas N. Lippe

P004h Petition for Writ of Mandate.wpd

EXHIBIT 1

Notice of Exemption

Form D

To: Office of Planning and Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

From: (Public Agency) Department of Water Resources
3500 Industrial Blvd, West Sacramento
P.O. Box 942836, Sacramento, CA 94236

County Clerk
County of _____

(Address)

Project Title: Drought Water Bank

Project Location - Specific:

The Central Valley, Napa Valley, SF Bay Area, and Southern California

Project Location - City: _____

Project Location - County: _____

Description of Nature, Purpose and Beneficiaries of Project:

The 2009 Drought Water Bank is a one-year transfer program to obtain water from willing sellers upstream of the Delta for sale to water users experiencing shortages due to extreme drought conditions and regulatory pumping curtailments. Critical health and safety water needs will have a first priority to the acquired supplies. The Project will be implemented subject to the relevant mitigation measures in the EWA EIS/EIR, Supplement and Addendums (see State Clearinghouse #1996032083).

Name of Public Agency Approving Project: California Department of Water Resources

Name of Person or Agency Carrying Out Project: California Department of Water Resources

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
Declared Emergency (Sec. 21080(b)(3); 15269(a));
Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
Categorical Exemption. State type and section number:
Statutory Exemptions. State code number: Sections 21080(b)(3), 21080(b)(4), and 21172 of the Public Resources Code

Reasons why project is exempt:

The Project is subject to the Governor's Proclamation of a State of Emergency of February 2, 2009 (attached), among whose purposes is to protect the safety of persons and property from the natural disaster created by the critical drought conditions currently existing in the State. Section 17 of said Proclamation directs that CEQA exemptions under these sections as well as CCR title 14, section 15269(c) shall apply. The Secretary for the Natural Resources Agency has determined that the 2009 Drought Water Bank falls within this exemption (see attached).

Lead Agency Contact Person: Michael Hendrick Area Code/Telephone/Extension: (916) 651-9547

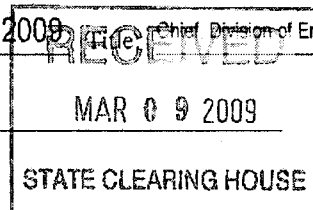
If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Barbara McDonnell Date: March 9, 2009 Chief, Division of Environmental Services

- Signed by Lead Agency
Signed by Applicant

Date received for filing at OPR:



Revised 2005

Memorandum

Date: March 5, 2009

To: Honorable Mike Chrisman
Secretary for Resources
The Resources Agency
1416 Ninth Street, Room 1311
Sacramento, California 95814

From: Department of Water Resources

Subject: Request for Concurrence in the use of the Emergency Exemption Provisions of CEQA for the 2009 Drought Water Bank.

This letter is to request your concurrence in the use of the emergency exemption provisions of CEQA for the 2009 Drought Water Bank pursuant to the Governor's February 27, 2009, Proclamation of a State of Emergency issued in response to the third consecutive year of drought in California.

The 2009 Drought Water Bank (Water Bank) began in the summer of 2008 in response to Governor Schwarzenegger's June 4, 2008, Executive Order S-06-08 to help alleviate the drought conditions should they continue into 2009. On June 12, the Governor issued an Emergency Proclamation for nine counties in the San Joaquin Valley due to the critically dry conditions. 2009 is proving to be another critically dry year.

The Water Bank has been established to provide critical water supplies in the form of water transfers from willing sellers to willing buyers and is now ready for implementation. The Water Bank will be implemented in a manner that mitigates for the environmental impacts of water transfers. These mitigation measures were refined during implementation of the Environmental Water Account (EWA) from 2001 through 2007. These mitigation measures are referenced in the Emergency Proclamation Governor Schwarzenegger signed on February 27, 2009 and detailed in the Department of Water Resources' (DWR) recently posted addendum to the EWA Environmental Impact Report.

The Emergency Proclamation also allows DWR to use the emergency provisions of CEQA if it receives concurrence from the California Natural Resources Agency. Attached is a copy of the Notice of Exemption that DWR would like to file with the State Clearinghouse in the next few days to keep the Water Bank implementation on schedule.


Honorable Mike Chrisman
March 5, 2009
Page 2

Please sign below if you concur that the use of the emergency exemption by DWR and all other State and local agencies for the 2009 Drought Water Bank is appropriate under the Governor's February 27 Emergency Proclamation.



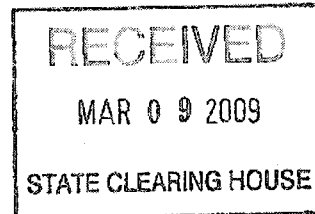
Lester A. Snow
Director
(916) 653-7007

CONCUR



Mike Chrisman
Secretary for Natural Resources

3/5/09
Date





Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

02/27/2009

State of Emergency - Water Shortage

PROCLAMATION

by the

Governor of the State of California

WHEREAS the State of California is now in its third consecutive year of drought; and

WHEREAS in each year of the current drought, annual rainfall and the water content in the Sierra snowpack have been significantly below the amounts needed to fill California's reservoir system; and

WHEREAS the rainfall and snowpack deficits in each year of the current drought have put California further and further behind in meeting its essential water needs; and

WHEREAS statewide, 2008 was the driest spring and summer on record, with rainfall 76 percent below average; and

WHEREAS the Sacramento and San Joaquin River systems, which provide much of the state's reservoir inflow, were classified as Critically Dry for the 2008 water year; and

WHEREAS in the second year of this continuous drought, on June 4, 2008, I issued an Executive Order proclaiming a statewide drought, and I ordered my administration to begin taking action to address the water shortage; and

WHEREAS because emergency conditions existed in the Central Valley in the second year of the drought, I issued an Emergency Proclamation on June 12, 2008, finding that conditions of extreme peril to the safety of persons and property existed in the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern caused by severe drought conditions, and I ordered my administration to take emergency action to assist the Central Valley; and

WHEREAS the drought conditions and water delivery limitations identified in my prior Executive Order and Emergency Proclamation still exist, and have become worse in this third year of drought, creating emergency conditions not just in the Central Valley, but throughout the State of California, as the adverse environmental, economic, and social impacts of the drought cause widespread harm to people, businesses, property, communities, wildlife and recreation; and

WHEREAS despite the recent rain and snow, the three year cumulative water deficit is so large there is only a 15 percent chance that California will replenish its water supply this year; and

WHEREAS in the time since the state's last major drought in 1991, California added 9 million new residents, experienced a significant increase in the planting of permanent, high-value crops not subject to fallowing, and was subjected to new biological opinions that reduced the flexibility of water operations throughout the year; and

WHEREAS because there is no way to know when the drought will end, further urgent action is needed to address

the water shortage and protect the people and property in California; and

WHEREAS rainfall levels statewide for the 2008-2009 water year are 24 percent below average as of the February 1, 2009 measurement; and

WHEREAS the second snow pack survey of the 2009 winter season indicated that snow pack water content is 39 percent below normal; and

WHEREAS as of February 23, 2009, storage in the state's reservoir system is at a historic low, with Lake Oroville 70 percent below capacity, Shasta Lake 66 percent below capacity, Folsom Lake 72 percent below capacity, and San Luis Reservoir 64 percent below capacity; and

WHEREAS low water levels in the state's reservoir system have significantly reduced the ability to generate hydropower, including a 62 percent reduction in hydropower generation at Lake Oroville from October 1, 2008 to January 31, 2009; and

WHEREAS a biological opinion issued by the United States Fish and Wildlife Service on December 15, 2008, imposed a 30 percent restriction on water deliveries from the State Water Project and the Central Valley Project to protect Delta Smelt; and

WHEREAS State Water Project water allocations have now been reduced to 15 percent of requested deliveries, matching 1991 as the lowest water allocation year in State Water Project history, and Central Valley Project water allocations for agricultural users have now been reduced to zero; and

WHEREAS the lack of water has forced California farmers to abandon or leave unplanted more than 100,000 acres of agricultural land; and

WHEREAS California farmers provide nearly half of the fresh fruits, nuts and vegetables consumed by Americans, and the crop losses caused by the drought will increase food prices, which will further adversely impact families and economies throughout California and beyond our borders; and

WHEREAS agricultural revenue losses exceed \$300 million to date and could exceed \$2 billion in the coming season, with a total economic loss of nearly \$3 billion in 2009; and

WHEREAS it is expected that State Water Project and Central Valley Project water delivery reductions will cause more than 80,000 lost jobs; and

WHEREAS the income and job losses will adversely impact entire communities and diverse sectors of the economy supported by those jobs and income, including the housing market and commercial business; and

WHEREAS these conditions are causing a loss of livelihood for many thousands of people, an inability to provide for families, and increased harm to the communities that depend on them; and

WHEREAS this loss of income and jobs will increase the number of defaults, foreclosures and bankruptcies, and will cause a loss of businesses and property at a time when Californians are already struggling with a nationwide and worldwide economic downturn; and

WHEREAS the Central Valley town of Mendota, as one example, already reports an unemployment rate of more than 40 percent and lines of a thousand or more for food distribution; and

WHEREAS when jobs, property and businesses are lost, some families will move away from their communities, causing further harm to local economies, lower enrollments in local schools and reduced funding for schools; and

WHEREAS at least 18 local water agencies throughout the state have already implemented mandatory water conservation measures, and 57 agencies have implemented other water conservation programs or restrictions on water deliveries, with many agencies considering additional rationing and water supply reductions in 2009; and

WHEREAS the lack of water has forced local communities to draw water from their emergency water reserves, putting communities at risk of further catastrophe if emergency reserves are depleted or cut off; and

WHEREAS the state recently endured one of its worst wildfire seasons in history and the continuing drought conditions increase the risk of devastating fires and reduced water supplies for fire suppression; and

WHEREAS on February 26, 2009, the United States Department of Agriculture and the United States Department of Interior created a Federal Drought Action Team to assist California to minimize the social, economic, and environmental impacts of the current drought; and

WHEREAS the circumstances of the severe drought conditions, by reason of their magnitude, are beyond the control of the services, personnel, equipment and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat; and

WHEREAS under the provisions of section 8558(b) of the California Government Code, I find that conditions of extreme peril to the safety of persons and property exist in California caused by the current and continuing severe drought conditions and water delivery restrictions.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with the authority vested in me by the California Constitution and the California Emergency Services Act, and in particular California Government Code sections 8625 and 8571, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED that all agencies of the state government utilize and employ state personnel, equipment and facilities for the performance of any and all activities consistent with the direction of the California Emergency Management Agency (CalEMA) and the State Emergency Plan.

I FURTHER DIRECT THAT:

1. The California Department of Water Resources (DWR) shall, in partnership with other appropriate agencies, launch a statewide water conservation campaign calling for all Californians to immediately decrease their water use.
2. DWR shall implement the relevant mitigation measures identified in the Environmental Water Account Environmental Impact Report, Environmental Impact Statement, Supplement, and Addendums for the water transfers made through the 2009 Drought Water Bank. In addition, the California Air Resources Board shall, in cooperation with DWR and other agencies, expedite permitting and development of mitigation measures related to air quality impacts which may result from groundwater substitution transfers.
3. DWR and the State Water Resources Control Board (SWRCB) shall expedite the processing of water transfers and related efforts by water users and suppliers that cannot participate in the 2009 Drought Water Bank, provided that water users and suppliers can demonstrate that the transfer will not injure other legal users of water or cause unreasonable effects on fish and wildlife.
4. The SWRCB shall expedite the processing and consideration of the request by DWR for approval of the consolidation of the places of use and points of diversion for the State Water Project and federal Central Valley Project to allow flexibility among the projects and to facilitate water transfers and exchanges.
5. DWR shall implement short-term efforts to protect water quality or water supply, such as the installation of temporary barriers in the Delta or temporary water supply connections.
6. The SWRCB shall expedite the processing and consideration of requests by DWR to address water quality standards in the Delta to help preserve cold water pools in upstream reservoirs for salmon preservation and water supply.
7. To the extent allowed by applicable law, state agencies within my administration shall prioritize and streamline permitting and regulatory compliance actions for desalination, water conservation and recycling projects that provide drought relief.
8. The Department of General Services shall, in cooperation with other state agencies, immediately implement a water use reduction plan for all state agencies and facilities. The plan shall include immediate water conservation

actions and retrofit programs for state facilities. A moratorium shall be placed on all new landscaping projects at state facilities and on state highways and roads except for those that use water efficient irrigation, drought tolerant plants or non-irrigated erosion control.

9. As a condition to receiving state drought financial assistance or water transfers provided in response to this emergency, urban water suppliers in the state shall be required to implement a water shortage contingency analysis, as required by California Water Code section 10632. DWR shall offer workshops and technical assistance to any agency that has not yet prepared or implemented the water shortage contingency analysis required by California law

10. DWR shall offer technical assistance to agricultural water suppliers and agricultural water users, including information on managing water supplies to minimize economic impacts, implementing efficient water management practices, and using technology such as the California Irrigation Management Information System (CIMIS) to get the greatest benefit from available water supplies.

11. The Department of Public Health shall evaluate the adequacy of emergency interconnections among the state's public water systems, and provide technical assistance and continued financial assistance from existing resources to improve or add interconnections.

12. DWR shall continue to monitor the state's groundwater conditions, and shall collect groundwater-level data and other relevant information from water agencies, counties, and cities. It is requested that water agencies, counties and cities cooperate with DWR by providing the information needed to comply with this Proclamation.

13. DWR and the Department of Food and Agriculture shall recommend, within 30 days from the date of this Proclamation, measures to reduce the economic impacts of the drought, including but not limited to, water transfers, through-Delta emergency transfers, water conservation measures, efficient irrigation practices, and improvements to CIMIS.

14. The Department of Boating and Waterways shall recommend, within 30 days from the date of this Proclamation and in cooperation with the Department of Parks and Recreation, measures to reduce the impacts of the drought conditions to water-based recreation, including but not limited to, the relocation or extension of boat ramps and assistance to marina owners.

15. The Labor and Workforce Development Agency shall recommend, within 30 days from the date of this Proclamation, measures to address the impact of the drought conditions on California's labor market, including but not limited to, identifying impacted areas, providing one-stop service, assisting employers and workers facing layoffs, and providing job training and financial assistance.

16. DWR and the Department of Food and Agriculture shall be the lead agencies in working with the Federal Drought Action Team to coordinate federal and state drought response activities.

17. The emergency exemptions in Public Resources Code sections 21080(b)(3), 21080(b)(4) and 21172, and in California Code of Regulations, title 14, section 15269(c), shall apply to all actions or efforts consistent with this Proclamation that are taken to mitigate or respond to this emergency. In addition, Water Code section 13247 is suspended to allow expedited responses to this emergency that are consistent with this Proclamation. The Secretary for the California Environmental Protection Agency and the Secretary for the California Natural Resources Agency shall determine which efforts fall within these exemptions and suspension, ensuring that these exemptions and suspension serve the purposes of this Proclamation while protecting the public and the environment. The Secretaries shall maintain on their web sites a list of the actions taken in reliance on these exemptions and suspension.

18. By March 30, 2009, DWR shall provide me with an updated report on the state's drought conditions and water availability. If the emergency conditions have not been sufficiently mitigated, I will consider issuing additional orders, which may include orders pertaining to the following:

- (a) institution of mandatory water rationing and mandatory reductions in water use;
- (b) reoperation of major reservoirs in the state to minimize impacts of the drought;
- (c) additional regulatory relief or permit streamlining as allowed under the Emergency Services Act; and

(d) other actions necessary to prevent, remedy or mitigate the effects of the extreme drought conditions.

I FURTHER REQUEST THAT:

19. All urban water users immediately increase their water conservation activities in an effort to reduce their individual water use by 20 percent.

20. All agricultural water suppliers and agricultural water users continue to implement, and seek additional opportunities to immediately implement, appropriate efficient water management practices in order to minimize economic impacts to agriculture and make the best use of available water supplies.

21. Federal and local agencies also implement water use reduction plans for facilities within their control, including immediate water conservation efforts.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 27th day of February, 2009.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT 2

NOTICE OF COMMENCEMENT OF CEQA ACTION

VIA HAND DELIVERY

April 10, 2009

California Department of Water Resources
Attn: Lester A. Snow, Director
1416 9th Street, Room 1115-1
Sacramento, CA 95814

California Natural Resources Agency
Attn: Mike Chrisman, Secretary
1416 9th Street, Suite 1311
Sacramento, CA 95814

Re: Notice of Commencement of CEQA Action challenging 2009 Drought Water Bank

Dear Mr. Snow, Mr. Chrisman, or other agent of the agency:

This office represents the Butte Environmental Council, California Water Impact Network, and California Sportfishing Protection Alliance (“Petitioners”) with respect to the 2009 Drought Water Bank project. I write to notify you that, pursuant to California Public Resources Code section 21167.5 and Code of Civil Procedure section 388, Petitioners intend to file a Petition for Writ of Mandate (“Petition”) in the Superior Court for the State of California on or before April 13, 2009 against Respondents California Department of Water Resources and California Natural Resources Agency. The Petition will allege, *inter alia*, that Respondents violated the California Environmental Quality Act, at Public Resources Code §§ 21000 et seq. (“CEQA”) in approving the 2009 Drought Water Bank project.

Thank you for your attention to this matter.

Very truly yours,


Thomas N. Lippe

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NUMBER	FOR COURT USE ONLY	
LIPPE GAFFNEY WAGNER, LLP 329 BYRANT STREET #3D SAN FRANCISCO CA 94107		415-777-5600		
ATTORNEY FOR IN PRO PER		Ref. No. or File No.		
Insert name of court and name of judicial district and branch if any.				
SHORT TITLE OF CASE:				
INVOICE NO.	DATE:	TIME:	DEP./DIV.	CASE NUMBER:
037851				

PROOF OF SERVICE (CCP 1011)

1. AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED COPIES OF THE:

LETTER RE: NOTICE OF COMMENCEMENT OF CEQA ACTION.

2. PARTY SERVED: CALIFORNIA DEPARTMENT OF WATER RESOURCES

ADDRESS:

1416 9TH STREET #1115-1
SACRAMENTO CA 95814

3. I SERVED THE PARTY NAMED IN ITEM 2 BY LEAVING THE COPIES WITH OR IN THE PRESENCE OF:

SATINA DOE

TITLE: PERSON AUTHORIZED TO ACCEPT

(BUSINESS) IN ACCORDANCE WITH C.C.P. 1011 BY LEAVING THE NOTICE OR OTHER PAPERS WITH A RECEPTIONIST OR WITH A PERSON HAVING CHARGE THEREOF.

ON: 04/10/09 AT: 208PM

5. PERSON SERVING: SHIRLENE XICOTENCATL FEE FOR SERVICE: 60.00

CMX Attorney Service
7902 Gerber Rd, PMB #315
Sacramento, CA 95828
916-422-3616 FAX 916-422-3620

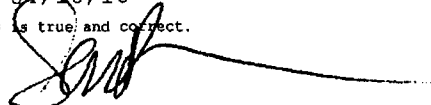
d. Registered California process server
(1) Employee or Independent Contractor
(2) Registration No. 2006-34
(3) County: SACRAMENTO
(4) Expiration: 04/10/10

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

DATE: 04/10/09

>

SIGNATURE



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NUMBER	FOR COURT USE ONLY	
LIPPE GAFFNEY WAGNER, LLP 329 BYRANT STREET #3D SAN FRANCISCO CA 94107		415-777-5600		
ATTORNEY FOR <u>IN PRO PER</u>		Ref. No. or File No.		
Insert name of court and name of judicial district and branch if any.				
SHORT TITLE OF CASE:				
INVOICE NO.	DATE:	TIME:	DEP./DIV.	CASE NUMBER:
037852				

PROOF OF SERVICE (CCP 1011)

1. AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED COPIES OF THE:

NOTICE OF COMMENCEMENT OF CEQA ACTION.

2. PARTY SERVED: CALIFORNIA NATURAL RESOURCES AGENCY

ADDRESS:

1416 9TH STREET #1311
SACRAMENTO CA 95814

3. I SERVED THE PARTY NAMED IN ITEM 2 BY LEAVING THE COPIES WITH OR IN THE PRESENCE OF:

CATHERINE DOE

TITLE: PERSON AUTHORIZED TO ACCEPT.

(BUSINESS) IN ACCORDANCE WITH C.C.P. 1011 BY LEAVING THE NOTICE OR OTHER PAPERS WITH A RECEPTIONIST OR WITH A PERSON HAVING CHARGE THEREOF.

ON: 04/10/09 AT: 202PM

5. PERSON SERVING: SHIRLENE XICOTENCATL FEE FOR SERVICE: 60.00

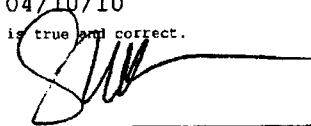
CMX Attorney Service
7902 Gerber Rd, PMB #315
Sacramento, CA 95828
916-422-3616 FAX 916-422-3620

- d. Registered California process server
(1) Employee or Independent Contractor
(2) Registration No. 2006-34
(3) County: SACRAMENTO
(4) Expiration: 04/10/10

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

DATE: 04/10/09

>
SIGNATURE



Lippe Gaffney Wagner LLP www.lgwlawyers.com

SAN FRANCISCO • 329 Bryant St., Ste. 3D, San Francisco, CA 94107 • T 415.777.5600 • F 415.777.9809
SACRAMENTO • 9333 Sparks Way, Sacramento, CA 95827 • T 916.361.3887 • F 916.361.3897

Thomas N. Lippe
Brian Gaffney
Keith G. Wagner
Jennifer L. Naegele
John H. Curran
Celeste C. Langille
Kelly A. Franger

NOTICE OF COMMENCEMENT OF CEQA ACTION

VIA HAND DELIVERY

April 13, 2009

Governor Arnold Schwarzenegger
Office of the Governor
California State Capitol Building
Sacramento, CA 95814

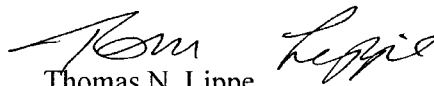
Re: Notice of Commencement of CEQA Action challenging 2009 Drought Water Bank

Dear Governor Schwarzenegger or authorized agent of the Governor's Office:

This office represents the Butte Environmental Council, California Water Impact Network, and California Sportfishing Protection Alliance ("Petitioners") with respect to the 2009 Drought Water Bank project. I write to notify you, pursuant to California Public Resources Code section 21167.5 and Code of Civil Procedure section 388, that Petitioners intend to file a Petition for Writ of Mandate ("Petition") in the Superior Court for the State of California today, April 13, 2009, against Respondents California Department of Water Resources, California Natural Resources Agency, and Governor Arnold Schwarzenegger. The Petition will allege, *inter alia*, that Respondents violated the California Environmental Quality Act, at Public Resources Code § 21000 et seq. ("CEQA") in approving the 2009 Drought Water Bank project.

Thank you for your attention to this matter.

Very truly yours,


Thomas N. Lippe

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NUMBER	FOR COURT USE ONLY	
LIPPE GAFFNEY WAGNER, LLP 329 BYRANT STREET #3D SAN FRANCISCO CA 94107		415-777-5600		
ATTORNEY FOR		Ref. No. or File No.		
Insert name of court and name of judicial district and branch if any.				
SHORT TITLE OF CASE:				
INVOICE NO.	DATE:	TIME:	DEP./DIV.	CASE NUMBER:
037900				

PROOF OF SERVICE (CCP 1011)

1. AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED COPIES OF THE:

NOTICE OF COMMENCEMENT OF CEQA ACTION
CHALLENGING 2009 DROUGHT WATER BANK

2. PARTY SERVED: GOVERNOR ARNOLD SCHWARZENEGGER
OFFICE OF THE GOVERNOR

ADDRESS:

CALIFORNA STATE CAPITAL
BUILDING
SACRAMENTO CA 95814

3. I SERVED THE PARTY NAMED IN ITEM 2
BY LEAVING THE COPIES WITH OR IN THE PRESENCE OF:

DELIVERED TO GOVERNORS

TITLE: MAIL ROOM AS DIRECTED BY RECEPTIONIST

(BUSINESS) IN ACCORDANCE WITH C.C.P. 1011 BY LEAVING THE NOTICE OR OTHER PAPERS WITH A RECEPTIONIST OR WITH A PERSON HAVING CHARGE THEREOF.
ON: 04/13/09 AT: 1015AM

5. PERSON SERVING: CARLTON XICOTENCATL FEE FOR SERVICE: 80.00

CMX Attorney Service
7902 Gerber Rd, PMB #315
Sacramento, CA 95828
916-422-3616 FAX 916-422-3620

- d. Registered California process server
(1) Employee or Independent Contractor
(2) Registration No. 99-86
(3) County: SACRAMENTO
(4) Expiration: 12/18/08

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

DATE: 04/13/09

>

SIGNATURE

