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11 CENTRAL DELTA WATER AGENCY and
12 SOUTH DELTA WATER AGENCY

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 CENTRAL DELTA WATER AGENCY and
16 SOUTH DELTA WATER AGENCY,

17 Plaintiffs,

18 vs.

19 UNITED STATES FISH & WILDLIFE
20 SERVICE; ROWAN GOULD; KEN
21 MCDERMOND; LORI RINEK; REN
22 LOHOEFENER; DAN CASTLEBERRY;
23 NATIONAL MARINE FISHERIES SERVICE;
24 JAMES W. BALSIGER; RUSS STRACH; TED
25 MEYERS; UNITED STATES BUREAU OF
26 RECLAMATION; J. WILLIAM MCDONALD;
27 MIKE CHOTKOWSKI; DON GLASER;
28 FEDERICO BARAJAS; UNITED STATES
ARMY CORPS OF ENGINEERS; ROBERT L.
VAN ANTWERP; PAUL ROBERSHOTTE;
CALIFORNIA NATURAL RESOURCES
AGENCY; MIKE CHRISMAN; KAREN
SCARBOROUGH; CALIFORNIA
DEPARTMENT OF WATER RESOURCES;
LESTER A. SNOW; DELORES BROWN;
BARBARA MCDONNELL; JERRY JOHNS;
CALIFORNIA BAY DELTA AUTHORITY;
JOE GRINDSTAFF; KEITH COOLIDGE;
STATE WATER RESOURCES CONTROL
BOARD; TOM HOWARD; CALIFORNIA
DEPARTMENT OF FISH & GAME; DON
KOCH; JOHN MCCAMMAN;
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; ROGER
PATTERSON; RANDALL NEUDECK; KERN
COUNTY WATER AGENCY; BRENT
WALTHALL; TOM CLARK; SANTA CLARA

Case No.:

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF AND
MANDAMUS**

[16 USC 1539(a); 42 U.S.C. § 4321 *et seq.*;
40 CFR 1500 *et seq.*; Cal. Pub. Res. Code
§ 21000 *et seq.*; Cal. Gov. Code § 11120 *et
seq.*; Cal. Fish & Game Code § 2800 *et
seq.*]

1 VALLEY WATER DISTRICT; GREG
2 ZLOTNICK; CINDY KAO; WESTLANDS
3 WATER DISTRICT; TOM BIRMINGHAM;
4 JASON PELTIER; ZONE 7 WATER
5 AGENCY; JILL DUERIG; KURT ARENDS;
6 SAN LUIS & DELTA MENDOTA WATER
7 AUTHORITY; DAN NELSON; ARA
8 AZHDERIAN; CONTRA COSTA WATER
9 DISTRICT; GREG GARTRELL; FRIANT
10 WATER AUTHORITY; RON JACOBSMA;
11 STEVE OTTEMOELLER; NORTH DELTA
12 WATER AGENCY; MELINDA TERRY;
13 MIRANT DELTA LLC; THE NATURE
14 CONSERVANCY; ENVIRONMENTAL
15 DEFENSE, INCORPORATED; DEFENDERS
16 OF WILDLIFE; CALIFORNIA FARM
17 BUREAU FEDERATION; AMERICAN
18 RIVERS; NATURAL HERITAGE
19 INSTITUTE; THE BAY INSTITUTE; BAY
20 DELTA CONSERVATION PLAN STEERING
21 COMMITTEE, and DOES 1 THROUGH 200,
22 inclusive.

Defendants.

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JURISDICTION

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1. This Court has jurisdiction under 28 U.S.C §§ 1331, 1361, 1367(a) and 2201. This action is brought to prevent the Defendants' further violation of (1) the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations at 40 C.F.R § 1500 *et seq.*; (2) the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; (3) the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.*; (4) the California Natural Community Conservation Planning Act, Cal. Fish & Game Code § 2800 *et seq.*; and (5) the California Bagley-Keene Opening Meeting Act, Cal. Gov. Code § 11120 *et seq.*

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VENUE

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2. Venue for this action properly lies with the United States District Court for the Eastern District of California pursuant to 28 U.S.C §1391(b). The BDCP steering committee meetings take place in Sacramento and a substantial part of the events and statutory violations involving the BDCP process that give rise to the claims alleged in this Petition occurred in this judicial district. Furthermore, large portions of the Delta region that is the subject of the BDCP, including the suggested site of the Defendants' proposed approximately 43-mile long and 1000 foot wide peripheral canal (isolated transfer facility), lie within this judicial district.

INTRODUCTION

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3. Defendants are federal and state agencies and officers, as well as non-profit entities, who are attempting to quickly implement a joint venture called the "Bay Delta Conservation Plan" ("BDCP"). The purpose of the BDCP is to make sweeping environmental, infrastructure, and operational changes to the principal water delivery systems in California's Sacramento-San Joaquin Delta. Those changes include the construction of a peripheral canal (isolated transfer facility) that mirrors the one soundly rejected by voters in a 1982 statewide referendum. In their haste to process a joint Federal Environmental Impact Statement/State Environmental Impact Report for the BDCP, Defendants have collectively violated numerous procedural and public notice requirements under both Federal and State laws. As a result, the general public and affected agencies and jurisdictions are unable to meaningfully assess and comment on the numerous and consequential environmental impacts of the BDCP on the Delta.

1 Those impacts include the BDCP's potential violations of numerous other Federal and State laws.
2 Plaintiffs CENTRAL DELTA WATER AGENCY and SOUTH DELTA WATER AGENCY
3 bring this action to correct the procedural and substantial deficiencies in the Defendants'
4 expedited and unlawful processes to finalize and approve the BDCP and associated Federal and
5 State permits, authorizations and entitlements.

6 PARTIES

7 4. Plaintiff CENTRAL DELTA WATER AGENCY ("CDWA") is a political
8 subdivision of the State of California created by the California Legislature under the Central
9 Delta Water Agency Act, chapter 1133 of the statutes of 1973. The CDWA came into existence
10 under this act in 1974. The CDWA encompasses approximately 120,000 acres within San
11 Joaquin County, all of which is within the Sacramento-San Joaquin Delta, also known as the "San
12 Francisco Bay-Delta Estuary" or the "Bay Delta" (the "Delta"). The lands within the CDWA
13 jurisdiction are primarily agricultural but also contain recreational developments and significant
14 wildlife habitat areas. The lands within the CDWA jurisdiction are dependent upon the water
15 supply in the channel of the Delta ("in-channel" water supply) for irrigation and other beneficial
16 uses. The CDWA's in-channel water supply is dependent upon the flow and quality of both the
17 Sacramento and San Joaquin River systems, which are the principle focus of the BDCP process,
18 as explained below. All of the lands within the CDWA are contiguous to the channels within the
19 CDWA and/or to the underground flow of water of those channels. The water rights pertaining to
20 those lands are riparian. In some instances, however, the water rights are also covered by permits
21 and licenses for appropriation. There may be some instances of pre-1914 filings. The water
22 rights of those lands in every case known to Plaintiffs are considered "prior vested" water rights
23 in relationship to the water rights of Defendants UNITED STATES BUREAU OF
24 RECLAMATION and DEPARTMENT OF WATER RESOURCES. CDWA is empowered to
25 assist landowners to protect and assure a dependable supply of water of suitable quality sufficient
26 to meet present and future needs.

27 5. Plaintiff SOUTH DELTA WATER AGENCY ("SDWA") is a political
28 subdivision of the State of California, created and existing by virtue of Chapter 1089 of the

1 statutes of 1973 of the State of California, as amended, known as the South Delta Water Agency
2 Act. The entire area within the SDWA is located within the Delta, and is generally referred to as
3 the southern Delta. The southern Delta boundaries of SDWA are described in section 9.1 of the
4 Act, and includes approximately 148,000 acres. The acreage within the southern Delta is
5 primarily devoted to agriculture and is dependent on the in-channel water supply in the southern
6 Delta for irrigation water and other beneficial uses. The in-channel water supply is primarily
7 dependent upon the inflow from the San Joaquin River System, which is one of the primary
8 subjects being considered by the BDCP, as explained below. The Stanislaus River forms a
9 portion of the southern boundary of the SDWA to the point where that river flows into the San
10 Joaquin River. The water rights pertaining to the lands covered by the SDWA are principally
11 riparian in nature, and in some instances covered by pre-1914 appropriations or filings for
12 appropriations pursuant to the Water Commission Act of 1913 (and permits and licenses issued
13 pursuant thereto), and in every case known to Plaintiffs are considered “prior vested” water rights
14 in relationship to the USBR’s permits. The SDWA has as its general purpose to protect the water
15 supply of the lands within the agency’s boundaries against intrusion of ocean salinity and to
16 assure a dependable supply of water of suitable quality sufficient to meet present and future
17 needs. The South Delta Water Agency Act provides that SDWA may “sue and be sued,” and “do
18 any and every lawful act necessary in order that a sufficient in-channel water supply may be
19 available for any present or future beneficial use or uses.” Section 4.2(b) & (k).

20 6. CDWA and SDWA are collectively referred to as “Delta Water Agencies” or
21 “Plaintiffs.”

22 7. Defendant UNITED STATES FISH & WILDLIFE SERVICE (“USFWS”) is an
23 agency of the United States Government, with offices in Sacramento, California, in this judicial
24 district, and is a member of the BDCP Steering Committee, described below.

25 8. Defendant ROWAN GOULD, is sued in his capacity as the Acting Director for the
26 Interior Department’s USFWS.

27 9. Defendant KEN MCDERMOND, is sued in his capacity as the Regional Director,
28 Pacific Southwest Region, for the USFWS.

1 10. Defendant LORI RINEK, is sued in her capacity as an officer of the Sacramento
2 Office of the USFWS, who was involved in the issuance of the Notice of Intent described below.

3 11. Defendant REN LOHOEFENER, is sued in his capacity as an officer of the
4 USFWS and serves as the representative of USFWS on the BDCP Steering Committee, described
5 below.

6 12. Defendant DAN CASTLEBERRY, is sued in his capacity as an officer of the
7 USFWS and serves as the representative of USFWS on the BDCP Steering Committee, described
8 below.

9 13. Defendant NATIONAL MARINE FISHERIES SERVICE (“NMFS”) is an agency
10 of the National Oceanic and Atmospheric Administration, an agency of the United States
11 Government, and is a member of the BDCP Steering Committee, described below.

12 14. Defendant JAMES W. BALSIGER, Ph.D., is sued in his capacity as the Acting
13 Assistant Administrator for the NMFS.

14 15. Defendant RUSS STRACH, is sued in his capacity as the Assistant Regional
15 Administrator, Protected Resources, Southwest Region, of the NMFS, who was involved in the
16 issuance of the Notice of Intent described below, and who serves as the representative of NMFS
17 on the BDCP Steering Committee, described below.

18 16. Defendant TED MEYERS, is sued in his capacity as an officer of the NMFS, who
19 serves as the representative of NMFS on the BDCP Steering Committee, described below.

20 17. Defendant UNITED STATES BUREAU OF RECLAMATION (“USBR”) is a
21 subdivision of the Department of the Interior, an agency of the United States of America, and is a
22 member of the BDCP Steering Committee, described below.

23 18. Defendant J. WILLIAM MCDONALD, is sued in his capacity as the Acting
24 Commissioner for the USBR.

25 19. Defendant MIKE CHOTKOWSKI, is sued in his capacity as the Acting Regional
26 Environmental Officer, Mid-Pacific Region, of the USBR, who was involved in the issuance of
27 the Notice of Intent described below.

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1 20. Defendant DON GLASER, is sued in his capacity as an officer of the USBR, who
2 serves as the representative of USBR on the BDCP Steering Committee, described below.

3 21. Defendant FEDERICO BARAJAS, is sued in his capacity as an officer of the
4 USBR, who serves as the representative of USBR on the BDCP Steering Committee, described
5 below.

6 22. Defendant UNITED STATES ARMY CORPS OF ENGINEERS (“USACE”) is a
7 branch of the United States Army and an agency of the United States, which operates public
8 engineering projects in California in this judicial district, and is a member of the BDCP Steering
9 Committee, described below.

10 23. Defendant ROBERT L. VAN ANTWERP, is sued in his capacity as the United
11 States Army Chief of Engineers and Commanding General of the USACE.

12 24. Defendant PAUL ROBERSHOTTE, is sued in his capacity as an officer of the
13 USACE, who serves as the representative of USACE on the BDCP Steering Committee,
14 described below.

15 25. Defendants USFWS, ROWAN GOULD, KEN MCDERMOND, LORI RINEK,
16 REN LOHOEFENER, DAN CASTLEBERRY, NMFS, JAMES W. BALSIGER, RUSS
17 STRACH, TED MEYERS, USBR, J. WILLIAM MCDONALD, MIKE CHOTKOWSKI, DON
18 GLASER, FEDERICO BARAJAS, USACE, ROBERT L. VAN ANTWERP and PAUL
19 ROBERSHOTTE are collectively referred to as “Federal Defendants.”

20 26. Defendants ROWAN GOULD, KEN MCDERMOND, LORI RINEK, REN
21 LOHOEFENER, DAN CASTLEBERRY, JAMES W. BALSIGER, RUSS STRACH, TED
22 MEYERS, J. WILLIAM MCDONALD, MIKE CHOTKOWSKI, DON GLASER, FEDERICO
23 BARAJAS, ROBERT L. VAN ANTWERP and PAUL ROBERSHOTTE are collectively referred
24 to as “Individual Federal Defendants.”

25 27. Defendant CALIFORNIA NATURAL RESOURCES AGENCY is an agency of
26 the State of California with offices in Sacramento, California, in this judicial district, and is a
27 member of the BDCP Steering Committee, described below.

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1 28. Defendant MIKE CHRISMAN, is sued in his capacity as the Secretary of the
2 California Natural Resources Agency.

3 29. Defendant KAREN SCARBOROUGH, is sued in her capacity as an officer of the
4 California Natural Resources Agency, who serves as the representative of the California Natural
5 Resources Agency on the BDCP Steering Committee, described below.

6 30. Defendant CALIFORNIA DEPARTMENT OF WATER RESOURCES (“DWR”)
7 is a subdivision of the Natural Resources Agency, an agency of the State of California, and has
8 offices in Sacramento, California in this judicial district, and is a member of the BDCP Steering
9 Committee, described below.

10 31. Defendant LESTER A. SNOW, is sued in his capacity as the Director for DWR,
11 who serves as the representative of DWR on the BDCP Steering Committee, described below.

12 32. Defendant DELORES BROWN, is sued in her capacity as Chief of the Office of
13 Environmental Compliance, DWR.

14 33. Defendant BARBARA MCDONNELL, is sued in her capacity as the Chief,
15 Division of Environmental Services, DWR, who was involved in the issuance of the Notice of
16 Preparation described below.

17 34. Defendant JERRY JOHNS, is sued in his capacity as an officer of DWR, who
18 serves as the representative of DWR on the BDCP Steering Committee, described below.

19 35. Defendant CALIFORNIA BAY DELTA AUTHORITY is the governing board for
20 the CALFED Bay Delta Program and was established pursuant to the California Bay Delta
21 Authority Act of 2003 (Cal. Gov., § 79400), and is a member of the BDCP Steering Committee,
22 described below.

23 36. Defendant JOE GRINDSTAFF, is sued in his capacity as an officer of the
24 California Bay Delta Authority, who serves as the representative of the California Bay Delta
25 Authority on the BDCP Steering Committee, described below.

26 37. Defendant KEITH COOLIDGE, is sued in his capacity as an officer of the
27 California Bay Delta Authority, who serves as the representative of the California Bay Delta
28 Authority on the BDCP Steering Committee, described below.

1 38. Defendant STATE WATER RESOURCES CONTROL BOARD is a board of the
2 California Environmental Protection Agency, an agency of the State of California, and has offices
3 in Sacramento, California, in this judicial district, and is a member of the BDCP Steering
4 Committee, described below.

5 39. Defendant TOM HOWARD, is sued in his capacity as an officer of the STATE
6 WATER RESOURCES CONTROL BOARD, who serves as the representative of STATE
7 WATER RESOURCES CONTROL BOARD on the BDCP Steering Committee, described
8 below.

9 40. Defendant CALIFORNIA DEPARTMENT OF FISH & GAME (“DFG”) is a
10 department of the California Natural Resources Agency, an agency of the State of California,
11 which has the authority and responsibility to issue incidental take permits in California, including
12 in this judicial district, and is a member of the BDCP Steering Committee, described below.

13 41. Defendant DON KOCH, is sued in his capacity as an officer of the DFG, who
14 serves as the representative of DFG on the BDCP Steering Committee, described below.

15 42. Defendant JOHN MCCAMMAN, is sued in his capacity as an officer of the DFG,
16 who serves as the representative of DFG on the BDCP Steering Committee, described below.

17 43. Defendant METROPOLITAN WATER DISTRICT OF SOUTHERN
18 CALIFORNIA (“Metropolitan Water District”) is a quasi-municipal corporation established by
19 the California legislature pursuant to the Metropolitan Water District Act, Statutes 1969, chapter
20 209. Metropolitan Water District serves parts of the counties of Los Angeles, Orange, San Diego,
21 Riverside, San Bernardino and Ventura, California. Metropolitan Water District is a member of
22 the BDCP Steering Committee, described below.

23 44. Defendant ROGER PATTERSON is an officer of Metropolitan Water District,
24 who serves as the representative of Metropolitan Water District on the BDCP Steering
25 Committee, described below.

26 45. Defendant RANDALL NEUDECK is an officer of Metropolitan Water District,
27 who serves as the representative of Metropolitan Water District on the BDCP Steering
28 Committee, described below.

1 46. Defendant KERN COUNTY WATER AGENCY is a public agency established by
2 the California legislature pursuant to the Kern County Agency Act, Statutes 1961, chapter 1003,
3 and serves the area of Kern County, California. Kern County Water Agency is a member of the
4 BDCP Steering Committee, described below.

5 47. Defendant BRENT WALTHALL is an officer of Kern County Water Agency,
6 who serves as the representative of Kern County Water Agency on the BDCP Steering
7 Committee, described below.

8 48. Defendant TOM CLARK is an officer of Kern County Water Agency, who serves
9 as the representative of Kern County Water Agency on the BDCP Steering Committee, described
10 below.

11 49. Defendant SANTA CLARA VALLEY WATER DISTRICT is a flood control and
12 water district established by the California legislature pursuant to the Santa Clara Valley Water
13 District Act, Statutes 1951, chapter 1405, and serves the area of Santa Clara County, California.
14 Santa Clara Valley Water District is a member of the BDCP Steering Committee, described
15 below.

16 50. Defendant GREG ZLOTNICK is an officer of Santa Clara Valley Water District,
17 who serves as the representative of Santa Clara Valley Water District on the BDCP Steering
18 Committee, described below.

19 51. Defendant CINDY KAO is an officer of Santa Clara Valley Water District, who
20 serves as the representative of Santa Clara Valley Water District on the BDCP Steering
21 Committee, described below.

22 52. Defendant WESTLANDS WATER DISTRICT is a local governmental entity
23 formed under and governed by Division 13 of the California Water Code, known as the
24 "California Water District Law," and serves the western parts of the counties of Fresno and
25 Kings, California. Westlands Water District is a member of the BDCP Steering Committee,
26 described below.

27 53. Defendant TOM BIRMINGHAM is an officer of Westlands Water District, who
28 serves as the representative of Westlands Water District on the BDCP Steering Committee,

1 described below.

2 54. Defendant JASON PELTIER is an officer of Westlands Water District, who serves
3 as the representative of Westlands Water District on the BDCP Steering Committee, described
4 below.

5 55. Defendant ZONE 7 WATER AGENCY is a local governmental entity, organized
6 and operated under the laws of the State of California, and serves parts of Alameda County,
7 California. Zone 7 Water Agency is a member of the BDCP Steering Committee, described
8 below.

9 56. Defendant JILL DUERIG is an officer of Zone 7 Water Agency, who serves as the
10 representative of Zone 7 Water Agency on the BDCP Steering Committee, described below.

11 57. Defendant KURT ARENDS is an officer of Zone 7 Water Agency, who serves as
12 the representative of Zone 7 Water Agency on the BDCP Steering Committee, described below.

13 58. Defendant SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
14 ("SLMDWA") was established in January of 1992 and consists of water agencies representing
15 federal and exchange water service contractors within the western San Joaquin Valley, San
16 Benito and Santa Clara counties in the State of California. SLMDWA is a member of the BDCP
17 Steering Committee, described below.

18 59. Defendant DAN NELSON is an officer of SLMDWA, who serves as the
19 representative of SLMDWA on the BDCP Steering Committee, described below.

20 60. Defendant ARA AZHDERIAN is an officer of SLMDWA, who serves as the
21 representative of SLMDWA on the BDCP Steering Committee, described below.

22 61. Defendant CONTRA COSTA WATER DISTRICT is a public water agency,
23 organized and operated under the laws of the State of California, and serves the area of Contra
24 Costa County, California. Contra Costa Water District is a member of the BDCP Steering
25 Committee, described below.

26 62. Defendant GREG GARTRELL is an officer of Contra Costa Water District, who
27 serves as the representative of Contra Costa Water District on the BDCP Steering Committee,
28 described below.

1 63. Defendant FRIANT WATER AUTHORITY, formerly known as the Friant Water
2 Users Authority, is a public entity created by a Joint Powers Agreement entered into between
3 various public irrigation districts and water districts operating in the San Joaquin Valley of the
4 State of California, and operates within this judicial district. Friant Water Authority is a member
5 of the BDCP Steering Committee, described below.

6 64. Defendant RON JACOBSMA is an officer of Friant Water Authority, who serves
7 as the representative of Friant Water Authority on the BDCP Steering Committee, described
8 below.

9 65. Defendant STEVE OTTEMOELLER is an officer of Friant Water Authority, who
10 serves as the representative of Friant Water Authority on the BDCP Steering Committee,
11 described below.

12 66. Defendant NORTH DELTA WATER AGENCY ("NDWA") was established by
13 the legislature in 1973 under the North Delta Water Agency Act, Statutes 1973, chapter 283, and
14 represents northern Delta interests in the State of California relating to water supply and water
15 quality. NDWA is a member of the BDCP Steering Committee, described below.

16 67. Defendant MELINDA TERRY is an officer of NDWA, who serves as the
17 representative of NDWA on the BDCP Steering Committee, described below.

18 68. Defendants CALIFORNIA NATURAL RESOURCES AGENCY, MIKE
19 CHRISMAN, KAREN SCARBOROUGH, CALIFORNIA DEPARTMENT OF WATER
20 RESOURCES, LESTER A. SNOW, DELORES BROWN, BARBARA MCDONNELL, JERRY
21 JOHNS, CALIFORNIA BAY DELTA AUTHORITY, JOE GRINDSTAFF, KEITH
22 COOLIDGE, STATE WATER RESOURCES CONTROL BOARD, TOM HOWARD,
23 CALIFORNIA DEPARTMENT OF FISH & GAME, DON KOCH, JOHN MCCAMMAN,
24 METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, ROGER
25 PATTERSON, RANDALL NEUDECK, KERN COUNTY WATER AGENCY, BRENT
26 WALTHALL, TOM CLARK, SANTA CLARA VALLEY WATER DISTRICT, GREG
27 ZLOTNICK, CINDY KAO, WESTLANDS WATER DISTRICT, TOM BIRMINGHAM,
28 JASON PELTIER, ZONE 7 WATER AGENCY, JILL DUERIG, KURT ARENDS, SAN LUIS

1 & DELTA-MENDOTA WATER AUTHORITY, DAN NELSON, ARA AZHDERIAN,
2 CONTRA COSTA WATER DISTRICT, GREG GARTRELL, FRIANT WATER AUTHORITY,
3 RON JACOBSMA, STEVE OTTEMOELLER, NORTH DELTA WATER AGENCY and
4 MELINDA TERRY are collectively referred to as "State Defendants."

5 69. Defendant MIRANT DELTA, LLC is a Delaware limited liability company that
6 provides electricity services to various areas in the State of California, and is a member of the
7 BDCP Steering Committee, described below.

8 70. Defendant THE NATURE CONSERVANCY is a District of Columbia
9 corporation that does business within this judicial district, and is a member of the BDCP Steering
10 Committee, described below.

11 71. Defendant ENVIRONMENTAL DEFENSE FUND, INCORPORATED is a New
12 York corporation that does business within this judicial district, and is a member of the BDCP
13 Steering Committee, described below.

14 72. Defendant DEFENDERS OF WILDLIFE is a District of Columbia corporation
15 that does business within this judicial district, and is a member of the BDCP Steering Committee,
16 described below.

17 73. Defendant CALIFORNIA FARM BUREAU FEDERATION is a California
18 corporation representing farming interests throughout California, does business in Sacramento,
19 California, in this judicial district, and is a member of the BDCP Steering Committee, described
20 below.

21 74. Defendant AMERICAN RIVERS is a District of Columbia corporation that does
22 business in this judicial district, and is a member of the BDCP Steering Committee, described
23 below.

24 75. Defendant NATURAL HERITAGE INSTITUTE is a California corporation that
25 does business within this judicial district, and is a member of the BDCP Steering Committee,
26 described below.

27 76. Defendant THE BAY INSTITUTE OF SAN FRANCISCO is a California
28 corporation, and is a member of the BDCP Steering Committee, described below.

1 77. Defendants MIRANT DELTA LLC, THE NATURE CONSERVANCY,
2 ENVIRONMENTAL DEFENSE FUND, DEFENDERS OF WILDLIFE, CALIFORNIA FARM
3 BUREAU FEDERATION, AMERICAN RIVERS, NATURAL HERITAGE INSTITUTE and
4 THE BAY INSTITUTE OF SAN FRANCISCO are collectively referred to as “Private
5 Defendants.”

6 78. Defendant BAY DELTA CONSERVATION PLAN STEERING COMMITTEE
7 (“Steering Committee”) is a joint venture of unknown form consisting of the following members:
8 Defendants USFWS, NMFS, USBR, UNITED STATES ARMY CORPS OF ENGINEERS,
9 CALIFORNIA NATURAL RESOURCES AGENCY, DWR, BAY DELTA CONSERVATION
10 PLAN STEERING COMMITTEE, CALIFORNIA BAY DELTA AUTHORITY, STATE
11 WATER RESOURCES CONTROL BOARD, CALIFORNIA DEPARTMENT OF FISH &
12 GAME, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, KERN
13 COUNTY WATER AGENCY, SANTA CLARA VALLEY WATER DISTRICT, WESTLANDS
14 WATER DISTRICT, ZONE 7 WATER AGENCY, SAN LUIS & DELTA MENDOTA WATER
15 AUTHORITY, CONTRA COSTA WATER DISTRICT, FRIANT WATER AUTHORITY,
16 NORTH DELTA WATER AGENCY, MIRANT DELTA LLC, THE NATURE
17 CONSERVANCY, ENVIRONMENTAL DEFENSE, DEFENDERS OF WILDLIFE,
18 CALIFORNIA FARM BUREAU FEDERATION, AMERICAN RIVERS, NATURAL
19 HERITAGE INSTITUTE and THE BAY INSTITUTE. Those members, as well as their
20 individual representatives described above, are referred to as the “Steering Committee
21 Defendants.” The Steering Committee conducts business regarding the BDCP in this judicial
22 district.

23 79. The true names and capacities, whether individual, corporate, associate, co-
24 conspirator, partner or alter-ego of those defendants sued herein under the fictitious names of
25 DOES 1 through 200, inclusive, are unknown to Delta Water Agencies, who therefore sue those
26 Defendants by such fictitious names. Delta Water Agencies will ask leave of court to amend this
27 Petition and Complaint and insert the true names and capacities of these defendants when the
28 same have been ascertained. Delta Water Agencies are informed and believe and on that basis

1 allege, that each of the Defendants designated herein as a DOE defendant is legally responsible in
2 some manner for the events and happenings alleged in this Petition and Complaint, and that Delta
3 Water Agencies' alleged injuries were proximately caused by the defendants' conduct.

4 EXHAUSTION OF ADMINISTRATIVE REMEDIES

5 80. Delta Water Agencies have performed all conditions precedent to this filing and
6 participated in the administrative process. Delta Water Agencies actively participated in the
7 administrative process by submitting a letter outlining the claims contained herein. As such, Delta
8 Water Agencies have fully exhausted their administrative remedies, to the extent such remedies
9 exist and to the extent that exhaustion of administrative remedies is legally necessary.

10 81. Delta Water Agencies possess no other remedy to challenge Defendants' abuses of
11 discretion and failures to comply with applicable laws and regulations.

12 FACTUAL BACKGROUND

13 The Sacramento-San Joaquin Delta

14 1. This case centers around the most important and controversial water supply source
15 in California – the Delta. Not only does the Delta supply water for agricultural and urban uses,
16 but it also provides vital habitat for various aquatic species and vegetation. The need for a
17 balance between water use and species protection has spurred legislation protecting the Delta and
18 its supply.

19 2. The Delta is that region in the State of California where the Sacramento and San
20 Joaquin Rivers meet before flowing out to the San Francisco Bay and into the Pacific Ocean. The
21 Delta includes portions of five counties which are Contra Costa, San Joaquin, Yolo, Solano, and
22 Sacramento, but provides water to numerous jurisdictions across the entire state. The Delta
23 covers more than 738,000 acres, and includes the largest estuary on the West Coast of the United
24 States. The Delta is specifically defined in California Water Code section 12220.

25 3. The Delta supports more than 750 species of plants and wildlife, including 130
26 species of fish. The Delta supports an estimated 25 percent of all warm water and anadromous
27 fish species. Eighty percent of California's commercial fishery species live in, or migrate
28 through, the Delta. The Delta also provides habitat for a number of species of fish that are

1 protected by the federal Endangered Species Act, including the Sacramento winter-run chinook
2 salmon, Central Valley spring-run chinook salmon, Central Valley steelhead, and the delta smelt.

3 4. An estimated 23 million people, two-thirds of all Californians, obtain at least some
4 of their water from the Delta, making the Delta the single largest source of California's water.
5 The Delta's principal water management system is comprised of the pumping facilities of both
6 the federal Central Valley Project ("CVP") and the California State Water Project ("SWP") in the
7 south Delta, near the City of Tracy. Those facilities pump 15,000 cubic feet per second into the
8 CVP and SWP aqueduct. The SWP and the CVP also provide water to more than 4 million acres
9 of irrigated farmland in the State, primarily in the San Joaquin Valley. Within the Delta itself,
10 more than 500,000 acres currently are in agricultural production.

11 **The Central Valley Project and State Water Project**

12 5. In 1933, prior to recognizing the importance of habitat preservation, the California
13 Legislature formed the CVP, in order to establish a reliable water supply from the Delta. The
14 purposes of the CVP are to "construct a system of works for the conservation, development,
15 storage, distribution and utilization of water, with incidental generation, transmission, and
16 distribution of electric power...." Cal. Water Code, § 11125. The USBR took over the CVP
17 during the 1930s and now operates 21 reservoirs, 11 power plants, 500 miles of major canals and
18 delivers seven million acre-feet of water to 250 water contractors, primarily for agricultural use.
19 Shasta Dam, key to the CVP, has salinity control in the Delta as one of its primary purposes.

20 6. The California Legislature approved the SWP in 1951 in order to supply water to
21 the rapidly growing Southern California. The SWP now consists of a series of 21 dams and
22 reservoirs, five power plants, 16 pumping plants, and 662 miles of aqueduct. It supplies domestic
23 water to approximately two-thirds of California residents. The water supply contracted under the
24 SWP is divided between urban users, who receive 70 percent, and agricultural users, who receive
25 30 percent. Metropolitan Water District serving Southern California, is the largest SWP
26 contractor and receives about half of all water delivered by the SWP. This water is taken out of
27 the Delta and pumped down to Southern California.

28

1 7. For a long time, the health of the Delta as an ecosystem and as a source of water has
2 been worsening due to water diversion causing increased salinity. The Delta is an essential part
3 of the San Francisco Bay—Delta Estuary. It is the area where the fresh waters of the Sacramento
4 and San Joaquin River systems meet and mix in the Delta to repulse the salinity of the San
5 Francisco Bay (“Bay”), thereby forming a fresh water pool. The Delta channels are tidally
6 connected to the Pacific Ocean through the San Francisco Bay. As the fresh water flows through
7 the Delta have decreased from increased pumping by the CVP and SWP facilities, the salt water
8 from the San Francisco Bay intrudes and causes increased salinity in the Delta. In light of the
9 salinity issues in the Delta, the courts have intervened on numerous decisions to ensure that
10 adequate fresh water continues to enter the Delta. These cases have focused on impacts to fish
11 and other species and agriculture in and along the Delta resulting from increased salinity.

12 8. In 1961, the Interagency Delta Committee was formed to recommend various Delta
13 facilities to offset adverse impacts of increasing Delta exports. In 1965, the Interagency Delta
14 Committee released a plan for a peripheral canal, beginning on the Sacramento River 15 miles
15 below Sacramento, running along the eastern edge of the Delta, and ending at the CVP and SWP
16 pumping facilities near Tracy. This canal was designed to physically separate the Delta’s
17 (estuary) water supply (Sacramento River) from the water conveyed to the pumping plants. The
18 peripheral canal (isolated conveyance facility) would have the capacity to divert much of the
19 Sacramento River around the Delta.. The Legislature approved the construction of the canal. In
20 1982 the voters approved a statewide referendum by a 62% majority vote that rejected the
21 legislative approval for the peripheral canal in light of concerns over the excessive water exports
22 and resulting environmental disaster to the Delta that would be caused by the proposed canal.

23 **The Central Valley Project Improvement Act**

24 9. In light of the environmental concerns of the Delta, the legislature drastically
25 changed the CVP in 1992 by enactment of the Central Valley Project Improvement Act
26 (“CVPIA”), Pub.L. No. 102-575 (Oct. 30, 1992), 106 Stat. 4706. The CVPIA changed the CVP
27 more than any other legislation passed in the prior 70 years of CVP’s existence. The purposes of
28 the CVP no longer merely focused on water supply but established goals of protection, restoration

1 and enhancement of fish, wildlife, and their habitats. The CVPIA essentially accomplished three
2 things: (a) It elevated fish and wildlife protection and restoration to the status of a primary
3 purpose of the CVP; (b) it reserved 800,000 acre-feet of CVP water for environmental and
4 wildlife protection purposes; and (c) it prohibited new water contracts. Among the specific goals
5 outlined in the CVPIA, Congress mandated that all reasonable efforts be made to double the six
6 species of anadromous fish most harmed by the CVP and supply much-needed water to Federal
7 and State refuges and other migratory waterfowl habitats in the Central Valley. These goals have
8 yet to be fulfilled.

9 **The Bay Delta Conservation Plan**

10 10. In yet another attempt to create a peripheral canal, the Defendants have, via the
11 legally flawed process challenged here, set out to create and obtain approval of what has now
12 been termed the Bay Delta Conservation Plan. According to the Defendants, the BDCP “is a
13 unique undertaking initiated and funded by public water agencies with the active participation of
14 environmental organizations, the state and federal fishery agencies, and other state and local
15 organizations that are involved in development of a plan for the longterm sustainability of the
16 Delta.” (Draft Preliminary Scoping Report ([www.water.ca.gov/deltainit/docs/
17 0209scoping_rpt.pdf](http://www.water.ca.gov/deltainit/docs/0209scoping_rpt.pdf))). In spite of its misleading title as a conservation plan, this “unique”
18 approach is contrary to law and attempts to circumvent a host of Federal and State statutory
19 schemes and supporting court decisions, including those specifically intended to protect the Delta
20 and its species.

21 11. The BDCP Steering Committee was formed in mid-2006 and charged with
22 developing and drafting the BDCP. Members of the Steering Committee (each of whom are
23 named in this Petition as Respondents and Defendants) executed a “Planning Agreement
24 Regarding The Bay Delta Conservation Plan” in 2006 (“Planning Agreement”). (Bay Delta
25 Conservation Plan: An Overview And Update, p.11) ([www.resources.ca.gov/bdcp/docs/
26 BDCP_Exec_Summ_web_pages.pdf](http://www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_pages.pdf)); Planning Agreement (October 6, 2006), p. 14
27 (http://www.resources.ca.gov/bdcp/docs/BDCP_Planning_Agreement_revised_3.19.09.pdf)).
28 The Planning Agreement provides that the Steering Committee “will be the principal forum

1 within which key policy and strategy issues pertaining to the BDCP will be discussed and
2 considered.”

3 12. As a state body formed by and comprised of state entities, the Steering Committee
4 has failed to comply with California’s Bagley-Keene Open Meeting Act, Cal. Govt. Code §11120
5 *et seq.*, for the reasons discussed below.

6 13. Although the Steering Committee is allegedly the “principal forum,” the BDCP and
7 its process is essentially a joint venture or partnership between Federal and State agencies, other
8 governmental entities and private entities. Defendants explain:

9 The BDCP is being developed through a collaboration of State, federal
10 and local water agencies, and Mirant Delta LLC (Mirant Delta), owners of
11 an electric power generating facilities located near Antioch and Pittsburg,
12 California. California Department of Water Resources (DWR) and US
13 Bureau of Reclamation (Reclamation), along with the Metropolitan Water
14 District of Southern California (Metropolitan), the Kern County Water
15 Agency (KCWA), the Santa Clara Valley Water District (SCVWD),
16 Alameda County Flood Control and Water Conservation District, Zone 7
17 Water Agency (Zone 7), the San Luis and Delta Mendota Water Authority
18 (SLDMWA), the Westlands Water District (WWD), and Mirant Delta are
19 collectively known as the “Potentially Regulated Entities” (PREs) and are
20 preparing the BDCP for existing and proposed covered activities within
21 the Statutory Delta. [¶]...[¶] The BDCP is being prepared with the
22 participation of the US Fish and Wildlife Service (Service), National
23 Marine Fisheries Service of the National Oceanic and Atmospheric
24 Administration (NMFS), California Resources Agency, California
25 Department of Fish and Game (DFG), the State Water Resources Control
26 Board (SWRCB), the PREs, and various stakeholders, including The
27 Nature Conservancy, Environmental Defense, Defenders of Wildlife, the
28 California Farm Bureau, the Natural Heritage Institute, American Rivers,
Contra Costa Water District, and The Bay Institute. These organizations
are members of the Steering Committee that is helping to guide
preparation of the BDCP. The regulatory agencies, Service, NMFS, DFG
and SWRCB are participating in the Steering Committee to provide
technical input and guidance in support of the Steering Committee’s
efforts to complete the BDCP.” (Draft Preliminary Scoping Report
(www.water.ca.gov/deltainit/docs/0209scoping_rpt.pdf.) See also, Notice
of Preparation (Feb. 13, 2009), p. 2 ([www.water.ca.gov/deltainit/docs/
bdcp_nop.pdf](http://www.water.ca.gov/deltainit/docs/bdcp_nop.pdf)) (attached to this Complaint as Exhibit 2); Notice of Intent,
74 Fed. Reg. 7257 (Feb. 13, 2009) (attached to this Complaint as Exhibit
1).)

25 14. Throughout 2007, the Steering Committee evaluated alternative conceptual
26 approaches to the development of the BDCP, under co-equal goals of water conveyance and
27 ecosystem restoration opportunities. One of the water conveyance options proposed and
28 subsequently adopted as the main approach was an isolated conveyance facility, which is

1 essentially another peripheral canal that will separate Sacramento River water from the Delta to
2 convey it directly to southern California. Ten conservation strategies were also analyzed based
3 on biological, planning, and other criteria, then narrowed to four conservation options. (Bay
4 Delta Conservation Plan: An Overview And Update, p. 11 ([www.resources.ca.gov/bdcp/docs/
5 BDCP_Exec_Summ_web_pages.pdf](http://www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_pages.pdf)).

6 15. In 2007, the Steering Committee published “Points of Agreement for Continuing
7 into the Planning Process,” which outlined basic approaches for developing the elements of the
8 BDCP. The Points of Agreement was internally inconsistent claiming first that the Defendants
9 agreed to develop and analyze more environmentally friendly ways to convey water through
10 and/or around the Delta to southern California with corresponding conservation strategies.
11 Nevertheless, the ultimate focus of the Points of Agreement was on conveyance facilities, which
12 would include new points of diversion and the isolated conveyance facility. (Bay Delta
13 Conservation Plan: An Overview And Update, p. 11
14 (www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_pages.pdf).

15 **The Combined NEPA/CEQA Scoping Meetings In 2008 Were Procedurally Flawed And**
16 **Inadequate**

17 16. On the one hand, the Defendants stated the purpose of the BDCP is “to provide for
18 the recovery of endangered and sensitive species and their habitats in the Delta in a way that also
19 will provide for the protection and restoration of water supplies. (Bay Delta Conservation Plan:
20 An Overview And Update ([www.resources.ca.gov/bdcp/docs/
21 BDCP_Exec_Summ_web_pages.pdf](http://www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_pages.pdf))). Thus, per the Defendants, the BDCP is being developed
22 “to provide for the issuance of permits under the Federal Endangered Species Act and the
23 California Natural Community Conservation Planning Act and will undergo extensive
24 environmental analysis that will include opportunities for public review and comment.” *Ibid.*

25 17. The Defendants further provide in that environmental analysis, “[a]n Environmental
26 Impact Report/Environmental Impact Statement (“EIR/EIS”) will be prepared by DWR as the
27 lead agency for the State of California, and by the co-lead federal agencies of NMFS, Service,
28 and Reclamation. DFG will serve as a responsible/trustee agency for the State of California.”

1 (Draft Preliminary Scoping Report (www.water.ca.gov/deltainit/docs/0209scoping_rpt.pdf.)
2 (See Notice of Preparation (Feb. 13, 2009) (www.water.ca.gov/deltainit/docs/bdcp_nop.pdf)
3 [“Formal preparation of the draft EIR/EIS is commencing and is incorporating all necessary
4 information as it is created in connection with, and as part of the BDCP process.”])

5 18. Scoping meetings for the EIR/EIS process were held in 2008. (Notice of Intent, 74
6 Fed. Reg. 7257 (Feb. 13, 2009) (“NOI”) (attached to this Complaint as Exhibit 1); Notice of
7 Preparation (“NOP”) (Feb. 13, 2009) (attached to this Complaint as Exhibit 2).) The Notices of
8 Intent and Notices of Preparation were inadequate because the descriptions of the proposed
9 actions and alternatives were ambiguous. Defendants, themselves, explained:

10 In these previous Notices the description of the proposed action and
11 possible alternatives were preliminary in nature and relied upon initial
12 BDCP planning documents which describe the overall intent and direction
13 of potential actions. Following publication of these previous Notices,
14 preliminary scoping comments were submitted in writing and provided at
15 preliminary scoping meetings. Some of the scoping comments indicated
16 that more detailed descriptions of the proposed actions and alternatives are
17 needed to allow specific comments on the range of alternatives and issues
18 and levels of detail to be considered in the analyses of environmental
19 consequences. [Notice of Intent, 74 Fed. Reg. 7257 (Feb. 13, 2009)
20 (Exhibit 1).]

21 19. In January 2009, the BDCP Steering Committee released “An Overview of the
22 Draft Conservation Strategy for the Bay Delta Conservation Plan” (“Overview”). The Overview
23 generally outlines components of the draft Conservation Strategy, but does not provide any
24 specific elements of the BDCP. The Overview also states:

25 Steering Committee members have raised a number of issues that extend
26 beyond the current scope of the BDCP, yet are related to the actions being
27 considered in the Conservation Strategy. In the upcoming months, the
28 Steering Committee will consider these issues in detail and determine
whether and how to address them within the BDCP. [An Overview of the
Draft Conservation Strategy for the Bay Delta Conservation Plan (January
12, 2009), p. 50 ([www.resources.ca.gov/bdcp/docs/Overview_of_
Conservation_Strategy_1-12-2009.pdf](http://www.resources.ca.gov/bdcp/docs/Overview_of_Conservation_Strategy_1-12-2009.pdf) - 2009-01-20).]

A number of issues were then listed, all of which would result in changes to the way the Delta is
operated. *Id.* pp. 50-51. All of those issues were purportedly to be addressed by “June 2009,”
when the draft of the BDCP is supposed to be completed. *Id.*, pp. 1, 50-51.

1 **Before The BDCP Was Drafted Or Made Public, The EIR/EIS Process Was Initiated**

2 20. That EIR/EIS process has already begun, even though Defendants and the Steering
3 Committee have not issued even a preliminary draft of the BDCP. Neither the geographic scope
4 of the BDCP, nor the conservation measures that will be taken under the BDCP, nor the location
5 and construction of water conveyance facilities have been finalized in such a manner as to
6 provide a finite project description.

7 21. Without a draft BDCP, Defendants also issued a Notice of Preparation (“NOP”) on
8 February 13, 2009, in order to initiate the scoping process for the EIR to be prepared under
9 CEQA. (NOP (Feb. 13, 2009), p. 3 (www.water.ca.gov/deltainit/docs/bdcp_nop.pdf)
10 (Exhibit 2).) The purpose of the scoping meetings were for the public “to provide input to the
11 environmental review of the Bay Delta Conservation Plan (BDCP).” (Flyer on Bay Delta
12 Conservation Plan EIR/EIS Public Scoping Meeting ([www.water.ca.gov/deltainit/docs/09-
13 ScopingMeetings.pdf](http://www.water.ca.gov/deltainit/docs/09-ScopingMeetings.pdf).) As of this date, no draft BDCP has yet been provided to the public.

14 22. In the NOP, Defendants explained three wide-ranging purposes of the proposed
15 actions under the BDCP, including the goal of exporting water out of the Delta via new and
16 existing SWP and CVP facilities. The NOP stated:

17 The purpose and project objectives of the proposed actions are to achieve
18 the following:

19 [1] To be granted incidental take permits for the covered species that
authorize take related to:

- 20 1. The operation of existing State Water Project Delta facilities
21 and construction and operation of facilities for the movement of
22 water entering the Delta from the Sacramento Valley watershed to
the existing State Water Project (SWP) and Federal Central Valley
23 Project (CVP) pumping plants located in the southern Delta;
24 2. The implementation of any conservation actions that have the
potential to result in take of species that are or may become listed
25 under the ESA, pursuant to the ESA at §10(a)(1)(B) and its
implementing regulations and policies;
3. The diversion and discharge of water by Mirant LLC for power
generation in the Western Delta.

26 [2] To improve the ecosystem of the Delta by:

- 27 1. Providing for the conservation and management of covered
species through actions within the BDCP Planning Area that will
28 contribute to the recovery of the species; and

2. Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems.
3. Reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP;

[3] Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.” [NOP, at 3 (Exhibit 2).]

23. However, because the BDCP was not even drafted prior to the issuance of the NOP (and still has not been drafted or provided to the public), the NOP described with *indefinite* terms the *possible* wide-ranging activities that would be covered by the BDCP. The NOP stated:

“The BDCP covered activities may include, **but are not limited to**:

1. Existing Delta conveyance elements and operations of the CVP and SWP;
2. New Delta conveyance facilities (including power line alignments) and operations of the CVP and SWP generally described in the BDCP November 2007 Points of Agreement (<http://resources.ca.gov/bdcp/>);
3. Operational activities, including emergency preparedness of the CVP and SWP in the Delta;
4. Operational activities in the Delta related to water transfers involving water contractors or to serve environmental programs;
5. Maintenance of the CVP, SWP, and other facilities in the Delta;
6. Facility improvements of the CVP and SWP within the Statutory Delta (California Water Code Section 12220);
7. Ongoing operation of and recurrent and future projects related to other Delta water users, as defined by the BDCP Planning Agreement (<http://resources.ca.gov/bdcp/>);
8. Projects designed to improve Delta salinity conditions; and
9. Conservation measures included in the BDCP, including, but not limited to, fishery related habitat restoration projects, adaptive management, and monitoring activities in the Delta. [NOP, 4 (Exhibit 2) (bold and underline added).]

24. The language used in the list of “Alternatives” in the NOP is also wide-ranging but *indefinite*. Those “Alternatives” further indicate the “potential” that the amount of water exported out of the Delta and delivered to other parts of the State would change if the BDCP was implemented. The NOP stated as follows:

The BDCP will **likely** consist of three major elements: 1) actions to improve ecological productivity and sustainability in the Delta; 2) potential capital improvements to the water conveyance system; and 3) potential changes in Delta-wide operational parameters of the CVP and SWP associated with improved water conveyance facilities.

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Three general alternatives are being considered as they relate to the potential changes in the water conveyance system and CVP and SWP operations. These include: 1) a through Delta alternative; 2) a dual conveyance alternative; and 3) an isolated facility alternative. The dual conveyance alternative may include use of existing points of diversion during some circumstances and potential new points of diversion at various locations in the North Delta, as well as facilities to move water from new points of diversion to the existing SWP and CVP pumping facilities in the South Delta. The fully isolated facility alternative would include potential new points of diversion at various locations in the North Delta and facilities to move water from new points of diversion to the existing SWP and CVP pumping facilities in the South Delta. The improved through-Delta alternative could include new temporary or permanent barriers to modify existing hydraulics or fish movement within the Delta, armoring of levees along Delta waterways to ensure continued conveyance capacity, and/or actions to improve conveyance capacity in existing Delta waterways.

New points of diversion **could be** located along the Sacramento River between South Sacramento and Walnut Grove. The new conveyance facility **could** extend from the new points of diversion to the existing SWP and CVP pumping facilities in the South Delta and be located **either** to the west **or** east of the Sacramento River. **Potential** CVP/SWP operations changes include the seasonal, daily, and real time amounts, rates, and timing of water diverted through and/or around the Delta. **Potential corresponding changes to water exports could also be developed.**

...

Preliminary locations, alignments, and capacities of new conveyance facilities, as well as habitat restoration activities and actions to address other stressors, to be evaluated in the EIS/EIR will be informed by the scoping process. In addition to the **potential** alternatives described above, other reasonable alternatives identified through the scoping process will be considered for potential inclusion in the alternatives analysis. [NOP, 6, 8 (Exhibit 2) (bold and underline added).]

25. Also before the BDCP was drafted or made public, Defendants issued a Notice of Intent (“NOI) on February 13, 2009, in order to initiate the scoping process for the EIS to be prepared under NEPA. (Exhibit 1.) Like the NOP, the NOI is lacking adequate information.

26. The language in the NOI is muddled and ambiguous. The “BDCP covered activities **may, but are not limited** to existing **or** new activities related to” “new Delta conveyance facilities,” “Facility improvements of the CVP and SWP within the Statutory Delta,” “future projects related to other Delta water users,” “Projects designed to improve Delta salinity conditions,” and “Conservation measures included in the BDCP, **including, but not limited to,**

1 fishery related habitat management, and monitoring activities in the Delta.” (NOI, 7259 (Exhibit
2 1) (bold added).) However, the facilities to be completed such as the new Delta conveyance
3 facilities, their nature and their location have yet to be defined. While a number of alternatives
4 for the new conveyance facilities have been mentioned in other BDCP process documents, the
5 new conveyance facilities remain undefined in the NOI. Also to be determined are the goals and
6 objectives of the BDCP, the species to be covered, and the methods and locations of conservation.
7 Since the project is yet to be defined, it is impossible to accurately describe.

8 27. Also, to the extent that any decisions about the BDCP have been made, they are not
9 accurately reflected in the NOI. The NOI lists a combination plate of the following proposed
10 actions as constituting the project:

11 The BDCP is a conservation plan
12 [I]ncidental take permits (ITP) for water operations and management activities
13 These incidental take authorizations would allow the incidental take of threatened
14 and endangered species resulting from covered activities and conservation
15 measures that will be identified through the planning process, including those
16 associated with water operations of the Federal Central Valley Project (CVP), as
17 operated by Reclamation, the California State Water Project (SWP), as operated by
DWR, as well as operations of certain Mirant Delta LLC (Mirant Delta) power
plants....
Authorizations that would allow projects that restore and protect water supplies,
water quality, and ecosystem health to proceed within a stable regulatory
framework. [NOI, p. 7257 (Exhibit 1).]

18 This description implies that the BDCP is a conservation plan and a take permit for any activities
19 identified in the planning process and an array of other non-specified “authorizations that would
20 allow projects.” This description is vague, and omits certain activities that will be included, such
21 as the construction of a conveyance facility, identified in the NOP and is unequivocally, contrary
22 to law. (NOP, p. 7257 (Exhibit 1).) While the location of the conveyance facility is not precisely
23 known, the NOI for the BDCP fails to even include a list of cities and counties where the facilities
24 may be located and which entities’ water supply and watersheds may be affected.

25 28. Both the NOP and the NOI listed 12 scoping meetings that were to take place
26 throughout the State between March 9, 2009 and March 26, 2009. Several of those locations are
27 within this judicial district. (NOI, p. 7257 (Exhibit 1); NOP, p. 9 (Exhibit 2).)
28

1 29. On March 9, 2009, on the date of the first scoping meeting, Plaintiffs sent a letter to
2 the specific contact persons at USFWS and DWR that are specifically listed in the NOI and NOP.
3 A true and correct copy of that letter is attached to this Complaint as Exhibit 3. In that letter,
4 Plaintiffs explained how the creation of the BDCP and its environmental process violate the
5 Federal and State laws described in this Complaint. Plaintiffs concluded:

6 Based on the foregoing, we request that the Scoping meetings be
7 postponed until such time as a project application and project description
8 including a draft BDCP can be provided to the public. We also request
9 that proper notice and an agenda be provided for each Steering Committee
10 and Scoping meeting pursuant to open meeting laws.

11 Neither the recipients of that letter, nor any of the Defendants, have ever responded to that letter.
12 The scoping meetings continued, were completed and the public was admonished that their last
13 chance to comment as to the content of the BDCP EIR/EIS is May 14, 2009.

14 30. Defendants have not scheduled any additional scoping meetings. A draft of the
15 BDCP still has not been issued to the public. In fact, Defendants have indicated that a draft
16 BDCP is not scheduled to be completed until “summer 2009” after the comment period of the
17 scope of the BDCP EIR/EIS is closed. (Bay Delta Conservation Plan: An Overview And
18 Update, p. 13 ([www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_](http://www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_pages.pdf)
19 [pages.pdf](http://www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_pages.pdf)); An Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan
20 (January 12, 2009), p. 1 ([www.resources.ca.gov/bdcp/docs/Overview_of_Conservation_](http://www.resources.ca.gov/bdcp/docs/Overview_of_Conservation_Strategy_1-12-2009.pdf)
21 [Strategy_1-12-2009.pdf](http://www.resources.ca.gov/bdcp/docs/Overview_of_Conservation_Strategy_1-12-2009.pdf) - 2009-01-20).)

22 **National Environmental Policy Act**

23 31. As discussed above, the BDCP is subject to the environmental review process of the
24 National Environmental Policy Act, 42 U.S.C. § 4321 (“NEPA”). NEPA requires the Federal
25 government to use all practicable means to improve and coordinate federal activities to create and
26 maintain conditions in which people and nature can exist in “productive harmony.” 42 U.S.C. §
27 4331. NEPA is an environmental full-disclosure law so that federal agencies must consider all
28 environmental consequences of their decisions.

 32. For each proposed action subject to NEPA, a single federal agency serves as the
lead agency. NEPA requires federal agencies to prepare an environmental impact statement

1 (“EIS”) for every major Federal action significantly affecting the quality of the human
2 environment. An EIS is a detailed statement by the responsible official on the environmental
3 impact of the proposed action, any adverse environmental effects which cannot be avoided should
4 the proposal be implemented, alternatives to the proposed action, the relationship between local
5 short-term uses of man's environment and the maintenance and enhancement of long-term
6 productivity, and any irreversible and irretrievable commitments of resources which would be
7 involved in the proposed action should it be implemented.

8 33. Once an agency decides to prepare an EIS, it issues an NOI. The NOI is a notice
9 that an environmental impact statement will be prepared and considered. 40 C.F.R. 1508.22. The
10 NOI must briefly describe the proposed action and proposed alternatives, describe the agency's
11 proposed scoping process including whether, when, and where any scoping meeting will be held,
12 and state the name and address of a person within the agency who can answer questions about the
13 proposed action and the environmental impact statement. 40 C.F.R. 1508.22.

14 34. To avoid any conflict of interest, NEPA also requires that the lead agency or a
15 consultant selected by the lead agency prepare the EIS. 40 CFR 1506.5 (c). The applicant may,
16 however, pay for the cost of preparing the EIS. NEPA 40 Questions, 46 FR 18026, Question 16.
17 If the consulting company has any financial or other interest in the outcome of the project, the
18 consultant must execute a disclosure statement. *Id.*, NEPA 40 Questions, 46 FR 18026, Question
19 17(a). According to the Council of Environmental Quality that develops environmental policy
20 and oversees federal agencies implementing NEPA, “financial or other interest in the outcome of
21 the project” is defined as, “any financial benefit, such as a promise of future construction or
22 design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the
23 project would aid proposals sponsored by the firm's other clients).”

24 35. The joint actions by all of the Defendants, through their involvement with and on
25 the Steering Committee and in the BDCP process, violated NEPA, and are continuing to violate
26 NEPA, in each of the following manners:

27 (a) The project is driven by three federal lead agencies. Defendants USFWS, USBR
28 and NMFS claim they are all lead agencies and none has initiated the process of determining

1 which of the three is the lead. This not only violates the procedure set forth in NEPA, but
2 subverts NEPA's public information purpose by failing to alert public officials and the general
3 public as to which agency procedures govern the NEPA process. Each federal agency
4 promulgates its own NEPA guidance. 40 C.F.R. § 1506.5. The tripartite lead agency approach
5 means that applicants, public officials and the general public do not know which NEPA
6 procedures apply to the proposed project and therefore cannot know if the procedures are
7 properly followed. The federal agencies must choose one lead agency for the BDCP under
8 NEPA, which will allow everyone to determine which NEPA Guidelines apply.

9 (b) Defendants issued the NOI on February 13, 2009, prior to the full development of
10 the project description. The inadequacy of the description for the proposed action is two-fold.
11 First, the BDCP has not yet been defined. Indeed, the BDCP will not even be drafted until the
12 summer of 2009. As a result, a description accurately describing the project as required under
13 NEPA, is impossible. Second, to the extent that some characteristics of the project are known,
14 they are not included in the NOI.

15 (c) The NOI issued by Defendants on February 13, 2009, does not contain the
16 information required by 40 C.F.R. 1508.22. Because of that lack of information, the public and
17 impacted agencies and jurisdictions, including the Delta Water Agencies cannot determine what
18 impacts the BDCP will have nor whether it complies with the law. For example, the BDCP
19 process provides glimpses of potential violations of the following laws: County of Origin (Cal.
20 Water Code, § 10505 et seq.); California Watershed Protection Act (Cal. Water Code §§ 11460-
21 11462); Protected Area Statutes (Cal. Water Code, §§ 1215-1222); Public Trust Doctrine;
22 additional sections of the Federal Endangered Species Act (16 U.S.C. § 1500 et seq.); Burns
23 Porter Act/California Water Resources Development Bond Act (Cal. Water Code, § 12930 et
24 seq.); Delta Protection Act of 1959 (Cal. Water Code, § 12200); the Central Valley Project
25 Improvement Act (Pub.L. No. 102-575 (Oct. 30, 1992, 106 Stat. 4706)); Clean Water Act (33
26 U.S.C. § 1251 et seq.) and the 1995 Water Quality Control Plan for the Bay Delta. A draft of the
27 BDCP will enable the public to determine whether such violations will occur if the BDCP is
28 approved. Furthermore, the project alternatives are insufficiently identified. When comparing

1 the NOI issued on February 13, 2009, to the sample NOI in the USFWS handbook, the absence of
2 alternatives from the NOI is obvious. (Fish and Wildlife Service Handbook, Chapter 2, Ex. 3
3 (<http://www.fws.gov/r9esnepa/draft%20550a.htm>.) The sample NOI contains a full page
4 discussion of four project alternatives. The NOI for the BDCP does not contain any mention of
5 alternatives, thus violating 40 C.F.R. § 1508.22 (a).

6 (d) Defendants failed to direct consultant disclosure of any and all conflicts of interest.
7 Delta Water Agencies are informed and believe and on that basis allege that the BDCP Steering
8 Committee entered into a contract with HDR and CH2MHill to prepare the EIS in June, 2008.
9 That contract violated NEPA in the following two ways. First, Delta Water Agencies are further
10 informed and believe and on that basis allege that the co-lead federal agencies of USFWS, USBR
11 and NMFS did not hire the consultant; instead DWR, a state agency, interviewed and retained the
12 consultants. This violates not only the process articulated in the regulations, but also violates the
13 spirit of the laws, which is to avoid a conflict of interest. Second, Delta Water Agencies are
14 further informed and believe and on that basis allege that the two hired firms failed to disclose
15 their conflicts of interest. Delta Water Agencies are further informed and believe and on that
16 basis allege that HDR and CH2MHill have ongoing contracts with Metropolitan Water District
17 and Westlands Water District for the design of water treatment and water delivery systems; and
18 both of these districts stand to benefit directly from the BDCP. Because of the financial benefits
19 as well as their ongoing working relationships with some of the interested water districts driving
20 this process, HDR and CH2MHill can not objectively evaluate the potential impacts of the BDCP.
21 Additionally, because of the historical relationship between the consultants and the water delivery
22 agencies, the approval of the BDCP and its EIR/EIS will increase the likelihood that additional
23 contracts will be awarded to HDR and CH2MHill on BDCP facilities design and construction if
24 approved. The EIS process is underway, as evidenced by the commencement of the scoping
25 meetings, yet neither HDR nor CH2MHill have issued disclosure statements as required by law.

26 (e) Defendant, and specifically USFWS and NMFS, should re-issue the NOI when the
27 project has been clearly defined in a draft BDCP that has been provided to the public. New
28 scoping meetings should then be held in conjunction with the issuance of the new NOI.

1 **Endangered Species Act**

2 36. One of the purposes of the BDCP is to obtain an incidental take permit to cover the
3 activities included in the BDCP. The federal ESA prohibits any person from taking an
4 endangered species of fish or wildlife listed pursuant to Section 4 of the act. 16 U.S.C. §1538.
5 Such taking may be allowed under Section 10 of ESA if the taking is incidental to an otherwise
6 lawful activity, and a conservation plan (“HCP”) is submitted. 16 U.S.C. §1539 (a)(1)(B) &
7 (a)(2). The HCP must specify, among other things, the impacts resulting from the taking, steps
8 the applicant will pursue to minimize and mitigate such impacts and alternative actions to such
9 taking the applicant has considered. 16 U.S.C. §1539 (a)(2). Notice of this application must be
10 published in the Federal Register. 16 U.S.C. §1539 (c).

11 37. Here, the NOI published for the BDCP indicates that the “BDCP is a conservation
12 plan being prepared to meet the requirements of the federal ESA and other laws.” It further
13 indicates that DWR intends to apply for a federal ESA take permit. However, no notice of the
14 sought take permit has been published in the Federal Register. The NOI cannot serve as the
15 notice of the take permit because it does not identify the impacts which will result from the
16 taking, indicate what steps the applicant will take to minimize and mitigate the impacts, and it
17 does not discuss any alternatives.

18 38. The Defendants’ failure to publish a notice of application for the take permit not
19 only violates the federal ESA regulations, but subverts the public and agency input process
20 fundamental to the federal ESA. If the public and agencies do not know any details of the project
21 for which the permit is sought, and does not know the potential effects of that project on
22 endangered species, they are not even aware of the need for comment and involvement. The
23 failure to publish the required notice in the Federal Register effectively precludes adequate public
24 participation.

25 39. Unless these violations are corrected, Defendants will timely seek leave of court in
26 this action to amend this Complaint and add these causes of action regarding failure to publish
27 notice of application under the federal ESA pursuant to 16 U.S.C. § 1540(g). Note, the Delta
28 Water Agencies are preparing a 60 day notice of intent to sue at this time.

1 **California Environmental Quality Act**

2 40. Like NEPA, the BDCP process is also required to comply with the environmental
3 review process under the California Environmental Quality Act, California Public Resources
4 Code § 2100 et seq. (“CEQA”). CEQA requires public agency decisionmakers to consider the
5 environmental implications of their actions. The environmental impact report (“EIR”) is the heart
6 of CEQA. The purpose of the EIR is to inform the public and its responsible officials of the
7 environmental consequences of their decisions before they are made. After deciding that an EIR
8 must be prepared for the project, the lead agency is required to send a Notice of Preparation
9 (“NOP”) to the Office of Planning and Research and each responsible and trustee agency. 14
10 Cal.Code Regs. § 15082 (a). At a minimum, the NOP must sufficiently describe the project and
11 the potential environmental effects to enable the responsible agencies to make a meaningful
12 response. 14 Cal. Code Regs. § 15082 (a)(1). Specifically, the NOP must include a project
13 description, the location of the project, and probable environmental effects. 14 Cal. Code Regs. §
14 15082 (a)(1).

15 41. The joint actions by all of the Defendants, through their involvement with and on
16 the Steering Committee and in the BDCP process, violated CEQA in the following manner:

17 (a) The BDCP is still in the development stages and no clear definition of the project
18 is yet available. Thus, the NOP issued on February 13, 2009, cannot yet sufficiently describe the
19 BDCP or its environmental effects.

20 (b) Even if the BDCP had been adequately defined by the Steering Committee at this
21 stage, which it has not, the NOP does not reflect a sufficient project description and seemingly
22 ignores the requirement that it must describe the Project’s probable environmental effects.
23 Therefore, the NOP is insufficient.

24 42. Without an adequate NOP, the public scoping meetings were not valid. Because the
25 BDCP covers a combination of five or more counties, plus will affect watersheds as far as the
26 Oregon border as well as the entire State’s water supply, the BDCP is a project of statewide,
27 regional and area-wide significance and a scoping meeting is required. 14 C.C.R. § 15206.
28 Under CEQA, scoping meetings can only be held after the NOP has been sent out to alert other

1 agencies and the public of the project. The NOP essentially initiates interagency dialogue.
2 Scoping Meetings also have to be publicly noticed. 14 C.C.R. § 15082 (c)(1). The NOP issued by
3 Defendants on February 13, 2009, was not valid for the reasons described above, and therefore
4 the scoping meetings were not properly noticed. Accordingly, this Court should order that new
5 Scoping Meetings be convened after a new NOP is issued and only after the BDCP is drafted and
6 made available to the public for review and comment.

7 **Separation of the EIR from the EIS**

8 43. Under the circumstances in this case, an EIS and EIR should not be combined into a
9 single document. Federal and state agencies may exercise their discretion in determining whether
10 the goals and objectives of NEPA and CEQA would be better served by separate documents or a
11 combined document. In this case, the EIR under CEQA and the EIS under NEPA should be
12 drafted and reviewed separately because (a) the combined document would mislead the public;
13 (b) CEQA consists of substantive mandates, whereas NEPA is merely procedural; and (c) a
14 combined environmental document will not meet the preferred timing deadlines under CEQA or
15 those stated by the Steering Committee.

16 **Natural Community Conservation Planning Act**

17 44. In addition to seeking a federal incidental take permit, Defendants also seek a state
18 incidental take permit under the California Natural Community Conservation Planning Act, Cal.
19 Fish & Game Code § 2800 *et seq.* (“NCCPA”). The NCCPA was enacted for the purpose of
20 sustaining and restoring

21 those species and their habitat identified by the [D]epartment [of Fish and
22 Game] that are necessary to maintain the continued viability of those
23 biological communities impacted by human changes to the landscape.
[Cal. Fish & Game Code, § 2801 (i).]

24 45. Instead of reacting to specific projects, a natural community conservation plan “can
25 provide an early planning framework for proposed development projects within the planning area
26 in order to avoid, minimize, and compensate for project impacts to wildlife.” Cal. Fish & Game
27 Code, § 2081 (g). The conservation plan’s purpose is “to provide comprehensive management
28 and conservation of multiple wildlife species ...” Cal. Fish & Game Code, § 2810 (a).

1 46. The NCCPA accomplishes its conservation purposes by authorizing parties, with
2 the oversight, direction and approval of DFG, to create conservation plans that satisfy the
3 requirements of the NCCPA. The process begins with a planning agreement between the parties,
4 which outlines the goals and requirements of the natural community conservation plan (“NCCP”).
5 The planning agreement sets the foundation for the final plan, which is drafted by the parties
6 under the supervision of DFG. The NCCPA requires that this process be as public as possible,
7 giving the public all reasonable opportunities to comment and participate. Once the NCCP is
8 finalized, it must be reviewed and approved by DFG, if it makes the necessary findings under the
9 NCCPA. The result of an approved NCCP is the acquisition of an incidental take permit that
10 covers certain activities, as long as those activities adhere to the restrictions and conservation
11 measures set forth in the plan. Although the activities may not have to go through the process of
12 obtaining an individual incidental take permit, the activities still must acquire all other permits
13 necessary to engage in the activity or build the project.

14 47. The sole purpose of the NCCPA is conservation. The main contents of an NCCP
15 include adaptive management strategies, conservation measures protecting species and habitat,
16 reserve systems, and a monitoring program. Cal. Fish & Game Code, § 2820 (a). An NCCP also
17 includes a list of covered activities and any restrictions on those activities allowed within the
18 planning area “that are compatible with the conservation of species, habitats, natural
19 communities, and their associated ecological functions.” Cal. Fish & Game Code, § 2820 (a)(5).
20 In order to approve an NCCP, the California Department of Fish and Game must make certain
21 findings relating to the protection of habitat and conservation of species. Cal. Fish & Game
22 Code, § 2820 (a). As evidenced by the statutory scheme itself and the title of the act, the sole
23 purpose of the NCCPA is conservation. Even the covered activities play a supporting role to the
24 conservation purpose and are only permitted in the planning area if they are compatible with the
25 conservation objective.

26 48. In the case of the BDCP, the Steering Committee has changed the objective and
27 placed the goal of creating water supply conveyance facilities and operations on equal footing
28 with the goal of conservation, contrary to the NCCPA. As required by the NCCPA, the parties

1 developing the BDCP entered into a planning agreement in October of 2006. Also as required by
2 the NCCPA, the October 2006 Planning Agreement initially identified conservation as the sole
3 purpose of the BDCP but later identified water conveyance facilities. Following the execution of
4 the October 2006 Planning Agreement, subsequent documents and agreements drafted and
5 executed by the BDCP parties were inconsistent with the October 2006 Planning Agreement and
6 violated the NCCPA by the establishment of co-equal goals: conservation and water supply.

7 49. The October 2006 Planning Agreement outlined the “Planning Goals” of the BDCP,
8 and all of the “goals” listed in the agreement related to conservation and restoration of habitat and
9 species. (Planning Agreement (October 6, 2006) (“Planning Agreement”), p. 7.) The agreement
10 never mentioned that the BDCP has co-equal goals of conservation *and* water supply.

11 50. The Points of Agreement signed in November of 2007 specifically identified the
12 BDCP as having co-equal goals. The November 2007 Points of Agreement provided further
13 detail on the form the BDCP would take. In several sections, the November 2007 Points of
14 Agreement referenced the BDCP as achieving the goals of both conservation *and* water supply,
15 including the following references:

16 The members of the Steering Committee intend to develop and evaluate the
17 design, operational parameters and governance arrangements that may be
18 necessary to achieve the plan’s conservation *and water supply* objectives.
(p. 2)

19 The Steering Committee agrees that the most promising approach for
20 achieving the BDCP conservation *and water supply* goals involves a
21 conveyance system ... The main new physical feature of this conveyance
22 system includes the construction and operation of a new point (or points) of
23 diversion in the north Delta on the Sacramento River and an isolated
24 conveyance facility around the Delta. Modifications to existing south
25 Delta facilities to reduce entrainment and *otherwise improve the State
26 Water Project’s (SWP) and Central Valley Project’s (CVP) ability to
27 convey water through the Delta* while contributing to near and long-term
28 conservation *and water supply* goals ... (p. 3). (Emphasis added.)

24 51. The more recent public documents discussing the BDCP bluntly state that the
25 BDCP’s purposes are to conserve habitat and supply and deliver water. “The Steering Committee
26 agreed that the most promising approach for achieving both BDCP conservation *and water supply*
27 goals ...” (Bay Delta Conservation Plan: An Overview and Update, p. 11
28

1 (www.resources.ca.gov/bdcp/docs/BDCP_Exec_Summ_web_pages.pdf.) The NOP stated that
2 one of the purposes and project objectives of the BDCP was to “[r]estore and protect the ability of
3 the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the
4 availability of sufficient water ...,” even if in violation of law. (NOP, p. 4 (Exhibit 2).)

5 52. The approach of using co-equal goals to guide development of the BDCP violates
6 the purpose of the NCCPA, which is solely focused on the conservation of species and their
7 habitat. In an attempt to accomplish both objectives, the Steering Committee will have to
8 compromise the conservation aspect of the BDCP for certain water supply aspects in violation of
9 the NCCPA. This is especially true in the case of the Delta where there is not adequate flow for
10 the aquatic species in the river, and DWR and the Bureau of Reclamation have failed to fulfill
11 their water supply contracts. Under the statute, the water supply conveyance should only be
12 included as a “covered activity,” and the sole purpose should be to ensure that the plan provides
13 adequate conservation.

14 **California’s Bagley-Keene Open Meeting Act**

15 53. The Steering Committee is not adhering to the state open meeting laws, even though
16 it was created by state entities and is acting as an advisory body to state agencies and boards. The
17 purpose of California’s Bagley-Keene Opening Meeting Act, Cal. Govt. Code § 11120 *et seq.*,
18 along with other laws relating to open meetings, is to ensure that the deliberative process by
19 which decisions related to the public’s business are made shall be conducted in full view of the
20 public. The Bagley-Keene Opening Meeting Act applies to any “state body,” which includes the
21 following:

22 (a) Every state board, or commission, or similar multimember body
23 of the state that is created by statute ...

24 (c) An advisory board, advisory commission, advisory committee,
25 advisory subcommittee, or similar multimember advisory body of a
26 state body, if created by formal action of the state body or of any
27 member of the state body, and if the advisory body so created
28 consists of three or more persons ...

(d) A board, commission, committee, or similar multimember body
on which a member of a body that is a state body pursuant to this
section serves in his or her official capacity as a representative of that
state body and that is supported, in whole or in part, by funds

1 provided by the state body, whether the multimember body is
2 organized and operated by the state body or by a private corporation.
[Cal. Gov. Code, § 11121.]

3 54. The Bagley-Keene Opening Meeting Act applies to the BDCP Steering Committee
4 for two reasons. First, the Steering Committee was the committee created pursuant to statute.
5 The NCCPA requires the Department of Fish and Game to

6 establish, in cooperation with the parties to the planning agreement, a
7 process for public participation throughout plan development and review to
8 ensure that interested persons, including landowners, have an adequate
9 opportunity to provide input to lead agencies, state and federal wildlife
10 agencies, and others involved in preparing the plan. The public
11 participation objectives of this section may be achieved through public
12 *working groups or advisory committees*, established early in the process.
[Cal. Fish & Game Code, § 2815 (emphasis added).]

13 The statute requires the formation of some kind of process to ensure public participation, and
14 permits the creation of a committee or “body” to achieve these objectives. The Steering
15 Committee was established by the Department of Fish and Game, under their authority and
16 mandate to establish a public participation process. Since the BDCP Steering Committee consists
17 of many state agencies, some of which will also be permitted/regulated entities through the
18 BDCP, the Steering Committee constitutes a “state body” under the Bagley-Keene Opening
19 Meeting Act. Second, the Steering Committee also has representatives from many state agencies
20 and claims that it will be developing a conservation plan (the BDCP) that will greatly affect the
21 entire state. In light of these facts and the public policy that governmental proceedings are open
22 and transparent, especially in light of the enormous impact the Steering Committee’s decisions
23 will have statewide, the Steering Committee is, and should be, subject to the Bagley-Keene
24 Opening Meeting Act.

25 55. California Government Code section 11125 of the Bagley-Keene Opening Meeting
26 Act requires that notice must be posted on the internet and sent to all who request it at least 10
27 days prior to any meeting. The notice must include an agenda of all items to be discussed, the
28 time and place of the meeting, and the name, phone number and address of a contact person who
is available to answer any questions. *Id.* The notice must also contain information on the manner
and deadline for requesting disability modification. *Id.* Here, the Steering Committee and the

1 Steering Committee Defendants have violated those notice and agenda requirements of that
2 section of the Bagley-Keene Opening Meeting Act. The Steering Committee has failed to satisfy
3 any of the notice requirements, excepting time and place of its meetings. The next meeting
4 according to the calendar on the Department of Resources website
5 (http://resources.ca.gov/bdcp/calendar_2009.html) states that the next Steering Committee
6 meeting is Friday, April 17, 2009. Ten days notice would have to be given on Wednesday, April
7 8, 2009, in order to be posted or sent at least 10 days prior to the meeting. However, as of April
8 9, 2009, no notice was posted on-line outside of the time and place information. This notice fails
9 to include the necessary contact information and agenda items. Therefore, the Steering
10 Committee and the Steering Committee Defendants have violated the notice and agenda
11 requirements of the Bagley-Keene Opening Meeting Act.

12 **FIRST CLAIM FOR DECLARATORY RELIEF**

13 **NATIONAL ENVIRONMENTAL POLICY ACT**

14 **(By Plaintiffs Delta Water Agencies**

15 **Against All Defendants and Does 1 through 200)**

16 56. Delta Water Agencies incorporate by reference each and every allegation contained
17 in Paragraphs 1 through 55 as though fully set forth herein.

18 57. An actual controversy, for which Delta Water Agencies desire a resolution, has
19 arisen and now exists between the parties relating to whether the Defendants, through their
20 involvement in the BDCP process, violated NEPA, and are continuing to violate NEPA (a) by
21 having more than one lead federal agency for purposes of the EIS; (b) by issuing a NOI for the
22 BDCP on February 13, 2009, that does not contain the information required by 40 C.F.R. §
23 1508.22, including an adequate project description and project alternatives; (c) by failing to have
24 the consultants for the BDCP disclose any and all conflicts of interest; (d) by combining the EIR
25 with the EIS in a manner that would mislead the public; and (e) by engaging in the EIS process
26 for the BDCP before a draft of the BDCP was provided to the public for review and comment.

27 58. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, a declaratory judgment is
28 necessary in that Delta Water Agencies contend, and the Defendants deny, that the Defendants,

1 through their involvement in the BDCP process, violated NEPA (a) by having more than one lead
2 federal agency for purposes of the EIS; (b) by issuing a NOI for the BDCP on February 13, 2009,
3 that does not contain the information required by 40 C.F.R. 1508.22, including project
4 alternatives; (c) by failing to have the consultants for the BDCP disclose any and all conflicts of
5 interest; (d) by combining the EIR with the EIS in a manner that would mislead the public; and
6 (e) by engaging in the EIS process for the BDCP before a draft of the BDCP was provided to the
7 public for review and comment.

8 59. Delta Water Agencies are entitled to recover their attorneys' fees pursuant to 5
9 U.S.C. § 2412(d).

10 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

11 **SECOND CLAIM FOR INJUNCTIVE RELIEF**

12 **NATIONAL ENVIRONMENTAL POLICY ACT**

13 **(By Plaintiffs Delta Water Agencies**

14 **Against All Defendants and Does 1 through 200)**

15 60. Delta Water Agencies incorporate by reference each and every allegation contained
16 in Paragraphs 1 through 59 as though fully set forth herein.

17 61. The actions of all the Defendants, and each of them, described above, are beyond
18 the limits of their statutory authority and/or have been exercised and threatened to be exercised in
19 a manner which is in violation of the National Environmental Policy Act.

20 62. Delta Water Agencies will suffer irreparable harm if the Defendants, and each of
21 them, are not restrained from (a) having more than one lead federal agency of the BDCP; (b)
22 issuing a NOI for the BDCP that does not contain the information required by 40 C.F.R. 1508.22,
23 including project alternatives; (c) failing to have the consultants for the BDCP disclose any and
24 all conflicts of interest; (d) combining the EIR with the EIS for the BDCP; (e) engaging in the
25 EIS process for the BDCP unless and until (i) a draft of the BDCP has been provided to the public
26 for review and comment; and (ii) engaging in scoping meetings until after the BDCP has been
27 drafted.

28

1 63. Delta Water Agencies are entitled to a preliminary and permanent injunction
2 prohibiting the Defendants, and each of them, from (a) having more than one lead federal agency
3 of the BDCP; (b) issuing a NOI for the BDCP that does not contain the information required by
4 40 C.F.R. 1508.22, including project alternatives; (c) failing to have the consultants for the BDCP
5 disclose any and all conflicts of interest; (d) combining the EIR with the EIS for the BDCP; (e)
6 engaging in the EIS process for the BDCP unless and until (i) a draft of the BDCP has been
7 provided to the public for review and comment; and (ii) new scoping meeting are held after the
8 BDCP has been provided to the public.

9 64. Delta Water Agencies are entitled to recover their attorneys' fees pursuant to 5
10 U.S.C. § 2412(d).

11 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

12 **THIRD CLAIM FOR WRIT OF MANDAMUS**

13 **NATIONAL ENVIRONMENTAL POLICY ACT**

14 **(By Plaintiffs Delta Water Agencies**

15 **Against All Individual Federal Defendants and Does 1 through 200)**

16 65. Delta Water Agencies incorporate by reference each and every allegation contained
17 in Paragraphs 1 through 64 as though fully set forth herein.

18 66. The actions of the Individual Federal Defendants described herein are not in
19 accordance with law and are an abuse of their discretion. The Federal Defendants have violated
20 NEPA, and are continuing to violate NEPA (a) by having more than one lead federal agency for
21 purposes of the BDCP; (b) by issuing a NOI for the BDCP on February 13, 2009 that does not
22 contain the information required by 40 C.F.R. 1508.22, including project alternatives; (c) by
23 failing to have the consultants for the BDCP disclose any and all conflicts of interest; (d) by
24 combining the EIR with the EIS in a manner that would mislead the public; and (e) by engaging
25 in the EIS process for the BDCP before a draft of the BDCP was provided to the public for review
26 and comment.

27 67. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 1361, the court should issue a writ of
28 mandate compelling the Individual Federal Defendants to (a) designate one lead federal agency in

1 the BDCP process; (b) issue a Notice of Intent in connection with the BDCP process with an
2 adequate description of the proposed action and with all the information required by 40 C.F.R.
3 1508.22, including project alternatives; (c) disclose any and all of the conflicts of interest of the
4 BDCP; (d) draft and develop the EIS for the BDCP separate and apart from the EIR for the BDCP
5 under CEQA; (e) issue a draft of the BDCP and make that draft BDCP available to the public and
6 interested agencies and jurisdictions before any new NOI is noticed; and (f) notice a new NOI and
7 conduct new scoping meetings under the EIS process after the draft BDCP is issued.

8 68. Delta Water Agencies are entitled to recover their attorneys' fees pursuant to 5
9 U.S.C. § 2412(d).

10 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

11 **FOURTH CLAIM FOR DECLARATORY RELIEF**

12 **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

13 **(By Plaintiffs Delta Water Agencies**

14 **Against All State Defendants, Defendant Steering Committee, and Steering Committee**

15 **Defendants and Does 1 through 200)**

16 69. Delta Water Agencies incorporate by reference each and every allegation contained
17 in Paragraphs 1 through 68 as though fully set forth herein.

18 70. An actual controversy, for which Delta Water Agencies desire a resolution, has
19 arisen and now exists between the parties relating to whether the State Defendants, Defendant
20 Steering Committee, and Steering Committee Defendants through their involvement with and on
21 the Steering Committee and in the BDCP process, violated the California Environmental Quality
22 Act, by (a) failing to include an adequate project description in the NOP that was issued on
23 February 13, 2009; (b) issuing that NOP and conducting scoping meetings prematurely, before
24 the BDCP was drafted; and (c) combining the EIR and EIS in a manner that would mislead the
25 public and not meet the preferred timing deadlines under CEQA.

26 71. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, a declaratory judgment is
27 necessary in that Delta Water Agencies contend, and the State Defendants, Defendant Steering
28 Committee, and Steering Committee Defendants deny, that State Defendants, Defendant Steering

1 Committee, and Steering Committee Defendants through their involvement in the BDCP process,
2 violated CEQA by (a) failing to include an adequate project description in the NOP that was
3 issued on February 13, 2009; (b) issuing that NOP and conducting scoping meetings prematurely,
4 before the BDCP was drafted; and (c) combining the EIR and EIS in a manner that would mislead
5 the public and not meet the preferred timing deadlines under CEQA.

6 72. Pursuant to California Code of Civil Procedure section 1021.5, and Government
7 Code section 800, Delta Water Agencies are entitled to recover their attorneys' fees incurred in
8 this action because this Complaint seeks an important right affecting the public interest, because
9 the relief prayed for will confer on the general public or a large class of citizens a significant
10 benefit, and because the necessity and financial burden of this private enforcement makes an
11 award of attorneys' fees appropriate.

12 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

13 **FIFTH CLAIM FOR INJUNCTIVE RELIEF**

14 **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

15 **(By Plaintiffs Delta Water Agencies**

16 **Against All State Defendants, Defendant Steering Committee and Steering Committee**

17 **Defendants and Docs 1 through 200)**

18 73. Delta Water Agencies incorporate by reference each and every allegation contained
19 in Paragraphs 1 through 72 as though fully set forth herein.

20 74. The actions of the State Defendants, Defendant Steering Committee, and Steering
21 Committee Defendants described above, are in violation of the California Environmental Quality
22 Act.

23 75. Delta Water Agencies will suffer irreparable harm if the State Defendants,
24 Defendant Steering Committee, and Steering Committee Defendants are not restrained from
25 engaging in the EIS/EIR process for the BDCP unless and until the State Defendants, Defendant
26 Steering Committee, and Steering Committee Defendants (a) include an adequate project
27 description in any NOP that is issued in connection with the BDCP; (b) issue such a NOP after a
28 draft of the BDCP is completed and made available to the public and interested agencies and

1 jurisdictions for review and comment; (c) conduct new scoping meetings after the draft BDCP
2 and a new NOP are issued; and (d) separate the EIR and EIS processes for the BDCP.

3 76. Delta Water Agencies are entitled to a preliminary and permanent injunction
4 prohibiting the State Defendants from engaging in the EIS/EIR process for the BDCP unless and
5 until the State Defendants, Defendant Steering Committee, and Steering Committee Defendants
6 and each of them, (a) include an adequate project description in any NOP that is issued in
7 connection with the EIR process for the BDCP; (b) issue such a NOP after a draft of the BDCP is
8 completed and made available to the public and interested agencies and jurisdictions for review
9 and comment; (c) conduct new scoping meeting after the draft BDCP and a new NOP are issued;
10 and (d) separate the EIR and EIS processes for the BDCP.

11 77. Pursuant to California Code of Civil Procedure section 1021.5, and Government
12 Code section 800, Delta Water Agencies are entitled to recover their attorneys' fees incurred in
13 this action because this Complaint seeks an important right affecting the public interest, because
14 the relief prayed for will confer on the general public or a large class of citizens a significant
15 benefit, and because the necessity and financial burden of this private enforcement makes an
16 award of attorneys' fees appropriate.

17 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

18 **SIXTH CLAIM FOR DECLARATORY RELIEF**

19 **NATURAL COMMUNITY CONSERVATION PLANNING ACT**

20 **(By Plaintiffs Delta Water Agencies**

21 **Against All Defendants and Does 1 through 200)**

22 78. Delta Water Agencies incorporate by reference each and every allegation contained
23 in Paragraphs 1 through 77 as though fully set forth herein.

24 79. An actual controversy, for which Delta Water Agencies desire a resolution, has
25 arisen and now exists between the parties relating to whether the Defendants, and each of them,
26 through their involvement with and on the Steering Committee and in the BDCP process, violated
27 the Natural Community Conservation Planning Act by incorporating into the BDCP the co-equal
28 goals of both conservation and water supply.

1 80. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, a declaratory judgment is
2 necessary in that Delta Water Agencies contend, and the Defendants deny, that Defendants,
3 through their involvement with and on the Steering Committee and in the BDCP process, violated
4 the NCCPA by incorporating into the BDCP the co-equal goals of both conservation and water
5 supply.

6 81. Pursuant to California Code of Civil Procedure section 1021.5, and Government
7 Code section 800, Delta Water Agencies are entitled to recover their attorneys' fees incurred in
8 this action because this Complaint seeks an important right affecting the public interest, because
9 the relief prayed for will confer on the general public or a large class of citizens a significant
10 benefit, and because the necessity and financial burden of this private enforcement makes an
11 award of attorneys' fees appropriate.

12 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

13 **SEVENTH CLAIM FOR INJUNCTIVE RELIEF**

14 **NATURAL COMMUNITY CONSERVATION PLANNING ACT**

15 **(By Plaintiffs Delta Water Agencies**

16 **Against All Defendants and Does 1 through 200)**

17 82. Delta Water Agencies incorporate by reference each and every allegation contained
18 in Paragraphs 1 through 81 as though fully set forth herein.

19 83. The actions of the Defendants, and each of them, described above, are in violation
20 of the Natural Community Conservation Planning Act in that Defendants are seeking to have the
21 BDCP approved by the California Department of Fish and Game as a natural Community
22 Conservation Plan, even though the BDCP incorporates the co-equal goals of both conservation
23 and water supply.

24 84. Delta Water Agencies will suffer irreparable harm if the Defendants, and each of
25 them, are not restrained from seeking to have the BDCP approved by the California Department
26 of Fish and Game as a natural community conservation plan with the co-equal goals of both
27 conservation and water supply.

28

1 85. Delta Water Agencies are entitled to a preliminary and permanent injunction
2 prohibiting the Defendants, and each of them, from (a) seeking to have the BDCP approved by
3 the California Department of Fish and Game as a natural community conservation plan with the
4 co-equal goals of both conservation and water supply; and (b) from engaging in the NCCPA
5 process for the BDCP until the above violation is remedied.

6 86. Pursuant to California Code of Civil Procedure section 1021.5, and Government
7 Code section 800, Delta Water Agencies are entitled to recover their attorneys' fees incurred in
8 this action because this Complaint seeks an important right affecting the public interest, because
9 the relief prayed for will confer on the general public or a large class of citizens a significant
10 benefit, and because the necessity and financial burden of this private enforcement makes an
11 award of attorneys' fees appropriate.

12 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

13 **EIGHTH CLAIM FOR DECLARATORY RELIEF**

14 **CALIFORNIA'S BAGLEY-KEENE OPEN MEETING ACT**

15 **(By Plaintiffs Delta Water Agencies**

16 **Against Defendant Steering Committee, Steering Committee Defendants**

17 **and Does 1 through 200)**

18 87. Delta Water Agencies incorporate by reference each and every allegation contained
19 in Paragraphs 1 through 86 as though fully set forth herein.

20 88. An actual controversy, for which Delta Water Agencies desire a resolution, has
21 arisen and now exists between the parties relating to whether the Defendant Steering Committee
22 and each of the Steering Committee Defendants through their involvement with and on the
23 Steering Committee, violated the notice and agenda requirements of that section of the Bagley-
24 Keene Opening Meeting Act in California Government Code section 11125 by failing to post and
25 send as required, at least 10 days prior to any meeting, a notice with an agenda of all items to be
26 discussed, the time and place of the meeting, the name, phone number and address of a contact
27 person who is available to answer any questions, and information on the manner and deadline for
28 requesting disability modification.

1 89. Pursuant to 5 U.S.C. § 706 and 28 U.S.C. § 2201, a declaratory judgment is
2 necessary in that Delta Water Agencies contend, and the Defendant Steering Committee and each
3 of the Steering Committee Defendants deny, that the Defendant Steering Committee and each of
4 the Steering Committee Defendants through their involvement with and on the Steering
5 Committee, violated the notice and agenda requirements of that section of the Bagley-Keene
6 Opening Meeting Act in California Government Code section 11125 by failing to post and send
7 as required, at least 10 days prior to any meeting, a notice with an agenda of all items to be
8 discussed, the time and place of the meeting, the name, phone number and address of a contact
9 person who is available to answer any questions, and information on the manner and deadline for
10 requesting disability modification.

11 90. Pursuant to California Code of Civil Procedure section 1021.5, and Government
12 Code section 800, Delta Water Agencies are entitled to recover their attorneys' fees incurred in
13 this action because this Complaint seeks an important right affecting the public interest, because
14 the relief prayed for will confer on the general public or a large class of citizens a significant
15 benefit, and because the necessity and financial burden of this private enforcement makes an
16 award of attorneys' fees appropriate.

17 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

18 **NINTH CLAIM FOR INJUNCTIVE RELIEF**

19 **CALIFORNIA'S BAGLEY-KEENE OPEN MEETING ACT**

20 **(By Plaintiffs Delta Water Agencies**

21 **Against Defendant Steering Committee, Steering Committee Defendants**

22 **and Does 1 through 200)**

23 91. Delta Water Agencies incorporate by reference each and every allegation contained
24 in Paragraphs 1 through 90 as though fully set forth herein.

25 92. The actions of the Defendant Steering Committee, the Steering Committee
26 Defendants, and each of them, described above, are beyond the limits of their statutory authority
27 and/or have been exercised and threatened to be exercised in a manner which is in violation of the
28 notice and agenda requirements of California Government Code section 11125 by failing to post

1 and send as required, at least 10 days prior to any Steering Committee meeting, a notice with an
2 agenda of all items to be discussed, the time and place of the meeting, the name, phone number
3 and address of a contact person who is available to answer any questions, and information on the
4 manner and deadline for requesting disability modification.

5 93. Delta Water Agencies will suffer irreparable harm if the Defendant Steering
6 Committee, the Steering Committee Defendants, and each of them, are not restrained from
7 conducting any further Steering Committee meetings unless and until the Defendant Steering
8 Committee, the Steering Committee Defendants, and each of them, fully comply with the notice
9 and agenda requirements of California Government Code section 11125 by posting and sending
10 as required, at least 10 days prior to any Steering Committee meeting, a notice with an agenda of
11 all items to be discussed, the time and place of the meeting, the name, phone number and address
12 of a contact person who is available to answer any questions, and information on the manner and
13 deadline for requesting disability modification.

14 94. Delta Water Agencies are entitled to a preliminary and permanent injunction
15 prohibiting the Defendant Steering Committee, the Steering Committee Defendants, and each of
16 them, from conducting any further Steering Committee meetings unless and until the Defendant
17 Steering Committee, the Steering Committee Defendants, and each of them, fully comply with
18 the notice and agenda requirements of California Government Code section 11125 by posting and
19 send as required, at least 10 days prior to any Steering Committee meeting, a notice with an
20 agenda of all items to be discussed, the time and place of the meeting, the name, phone number
21 and address of a contact person who is available to answer any questions, and information on the
22 manner and deadline for requesting disability modification.

23 95. Pursuant to California Code of Civil Procedure section 1021.5, and Government
24 Code section 800, Delta Water Agencies are entitled to recover their attorneys' fees incurred in
25 this action because this Complaint seeks an important right affecting the public interest, because
26 the relief prayed for will confer on the general public or a large class of citizens a significant
27 benefit, and because the necessity and financial burden of this private enforcement makes an
28 award of attorneys' fees appropriate.

1 WHEREFORE, Delta Water Agencies pray for relief as hereinafter stated.

2 WHEREFORE, Delta Water Agencies pray:

3 **PRAYER**

4 **As for the First Cause of Action**

5 1. A declaration that the Defendants violated NEPA (a) by having more than one lead
6 federal agency for purposes of the BDCP; (b) by issuing a NOI for the BDCP on February 13,
7 2009, that does not contain the information required by 40 C.F.R. 1508.22, including an adequate
8 project description and project alternatives; (c) by failing to have the consultants for the BDCP
9 disclose any and all conflicts of interest; (d) by combining the EIR with the EIS in a manner that
10 would mislead the public; and (e) by engaging in the EIS process for the BDCP before a draft of
11 the BDCP was provided to the public for review and comment;

12 2. Attorney's fees and costs;

13 3. Such other and further relief as this Court deems just and proper.

14 **As for the Second Cause of Action**

15 1. A preliminary and permanent injunction prohibiting the Defendants, and each of
16 them, from (a) having more than one lead federal agency for the BDCP; (b) issuing a NOI for the
17 BDCP that does not contain the information required by 40 C.F.R. 1508.22, including project
18 alternatives; (c) failing to have the consultants for the BDCP disclose any and all conflicts of
19 interest; (d) combining the EIR with the EIS for the BDCP; (e) engaging in the EIS process for
20 the BDCP unless and until (i) a draft of the BDCP has been provided to the public for review and
21 comment; and (ii) new scoping meetings are held after the BDCP has been provided to the public;

22 2. Attorney's fees and costs;

23 3. Such other and further relief as this Court deems just and proper.

24 **As for the Third Cause of Action**

25 1. A writ of mandate compelling the Individual Federal Defendants to (a) designate
26 one lead federal agency for purposes of the BDCP; (b) issue an NOI in connection with the BDCP
27 process with an adequate description of the proposed action and with all of the information
28 required by 40 C.F.R. 1508.22, including project alternatives; (c) disclose any and all of the

1 conflicts of interest of the BDCP; (d) separate the EIR and the EIS; and (e) engage in the EIS
2 process for the BDCP after a draft of the BDCP is provided to the public for review and
3 comment;

4 2. Attorney's fees and costs;

5 3. Such other and further relief as this Court deems just and proper.

6 **As for the Fourth Cause of Action**

7 1. A declaration that State Defendants, Defendant Steering Committee, and Steering
8 Committee Defendants through their involvement in the BDCP process, violated CEQA by (a)
9 failing to include an adequate project description in the NOP that was issued on February 13,
10 2009; (b) issuing that NOP prematurely; and (c) combining the EIR and EIS in a manner that
11 would mislead the public and not meet the preferred timing deadlines under CEQA;

12 2. Attorney's fees and costs;

13 3. Such other and further relief as this Court deems just and proper.

14 **As for the Fifth Cause of Action**

15 1. A preliminary and permanent injunction prohibiting the State Defendants,
16 Defendant Steering Committee, and Steering Committee Defendants from engaging in the
17 EIS/EIR process for the BDCP unless and until (a) the State Defendants, Private Defendants, and
18 each of them, include an adequate project description in any NOP that is issued in connection
19 with the EIR process for the BDCP; (b) issue such a NOP after the initial draft of the BDCP is
20 completed and made available to the public and interested agencies and jurisdictions for review
21 and comment; (c) conduct new scoping meetings after the draft BDCP and a new NOP are issued;
22 and (d) separate the EIR and EIS processes for the BDCP .

23 2. Attorney's fees and costs;

24 3. Such other and further relief as this Court deems just and proper.

25 **As for the Sixth Cause of Action**

26 1. A declaration that Defendants, through their involvement with and on the Steering
27 Committee and in the BDCP process, violated the NCCPA by incorporating into the BDCP the
28 co-equal goals of both conservation and water supply.

1 2. Attorney's fees and costs;

2 3. Such other and further relief as this Court deems just and proper.

3 **As for the Seventh Cause of Action**

4 1. A preliminary and permanent injunction prohibiting the Defendants, and each of
5 them, from (a) seeking to have the BDCP approved by the California Department of Fish and
6 Game as a Natural Community Conservation Plan with the co-equal goals of both conservation
7 and water supply; and (b) from engaging in the NCCPA process for the BDCP until the above
8 violation is remedied;

9 2. Attorney's fees and costs;

10 3. Such other and further relief as this Court deems just and proper.

11 **As for the Eighth Cause of Action**

12 1. A declaration that the Defendant Steering Committee and each of the Steering
13 Committee Defendants through their involvement with and on the Steering Committee, violated
14 the notice and agenda requirements of that section of the Bagley-Keene Opening Meeting Act in
15 California Government Code section 11125 by failing to post and send as required, at least 10
16 days prior to any meeting, a notice with an agenda of all items to be discussed, the time and place
17 of the meeting, the name, phone number and address of a contact person who is available to
18 answer any questions, and information on the manner and deadline for requesting disability
19 modification;

20 2. Attorney's fees and costs;

21 3. Such other and further relief as this Court deems just and proper.

22 **As for the Ninth Cause of Action**

23 1. A preliminary and permanent injunction prohibiting the Defendant Steering
24 Committee, the Steering Committee Defendants, and each of them, from conducting any further
25 Steering Committee meetings unless and until the Defendant Steering Committee, the Steering
26 Committee Defendants, and each of them, fully comply with the notice and agenda requirements
27 of California Government Code section 11125 by posting and sending as required, at least 10
28 days prior to any Steering Committee meeting, a notice with an agenda of all items to be

1 discussed, the time and place of the meeting, the name, phone number and address of a contact
2 person who is available to answer any questions, and information on the manner and deadline for
3 requesting disability modification;

4 2. Attorney's fees and costs;

5 3. Such other and further relief as this Court deems just and proper.
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7

8 DATED: April 9, 2009

Respectfully submitted,

9 ABBOTT & KINDERMANN, LLP
10

11 By: /s/ Diane Kindermann Henderson

12 DIANE KINDERMANN HENDERSON

13 GLEN C. HANSEN

14 Attorneys for Plaintiffs

15 Central Delta Water Agency and

16 South Delta Water Agency
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