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6 NORTH COAST RIVERS ALLIANCE, FRIENDS OF THE RIVER,
SAVE THE AMERICAN RIVER ASSOCIATION, CALIFORNIA
7 SPORTFISHING PROTECTION ALLIANCE, and the WINNEMEM
WINTU TRIBE

FRESNO SUPERIOR COURT
GAC DEPUTY

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF FRESNO 11CECG03022

11 NORTH COAST RIVERS ALLIANCE, FRIENDS)
OF THE RIVER, SAVE THE AMERICAN RIVER)
12 ASSOCIATION, CALIFORNIA SPORTFISHING)
PROTECTION ALLIANCE, and the WINNEMEM)
13 WINTU TRIBE,)

Case No. :
**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND ATTORNEY'S FEES**

14 Petitioners/Plaintiffs,)

15 v.)

16 WESTLANDS WATER DISTRICT, WESTLANDS)
WATER DISTRICT - DISTRIBUTION DISTRICT)
17 NO. 1, WESTLANDS WATER DISTRICT -)
DISTRIBUTION DISTRICT NO. 2, and DOES I)
18 through XX, inclusive,)

19 Respondents/Defendants,)

20 and)

21 UNITED STATES BUREAU OF RECLAMATION)
and DOES XXI - C, inclusive,)

22 Real Parties in Interest.)
23

24 Petitioners NORTH COAST RIVERS ALLIANCE, FRIENDS OF THE RIVER, SAVE THE
25 AMERICAN RIVER ASSOCIATION, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE,
26 and the WINNEMEM WINTU TRIBE hereby petition this Court for a writ of mandate against
27 respondents WESTLANDS WATER DISTRICT, WESTLANDS WATER DISTRICT -
28 DISTRIBUTION DISTRICT NO. 1, WESTLANDS WATER DISTRICT - DISTRIBUTION DISTRICT

1 NO 2., and DOES I through XX, inclusive (collectively, “Westlands” or “respondents”), and by this
2 verified petition allege as follows:

3 INTRODUCTION

4 1. Petitioners bring this action to challenge respondents’ approval of six Central Valley
5 Project water service contracts (the “Proposed Contracts”).¹ The California Environmental Quality Act
6 (“CEQA”; Public Resources Code § 21000 *et seq.*) requires an environmental impact report (“EIR”) to be
7 prepared before these Proposed Contracts can be approved by respondents for offer to the United States
8 Bureau of Reclamation (“Bureau”). Petitioners are informed and believe, and thereon allege, that the
9 Bureau has not accepted and entered into the Proposed Contracts and may never do so. The Bureau must
10 first complete environmental reviews and consultations under applicable federal laws, including the Fish
11 and Wildlife Coordination Act, 16 U.S.C. section 651 *et seq.*, the Clean Water Act, 33 U.S.C. section
12 1251 *et seq.*, section 176 of the Clean Air Act, 42 U.S.C. section 7506, the National Historic Preservation
13 Act, 16 U.S.C. section 470 *et seq.*, the Migratory Bird Treaty Act, 16 U.S.C. section 703 *et seq.*, the
14 National Environmental Policy Act, 42 U.S.C. section 4231 *et seq.* (“NEPA”), and the Endangered
15 Species Act, 16 U.S.C. section 1531 *et seq.* (“ESA”), before it may consider whether to enter into the
16 Proposed Contracts.

17 2. Respondents claim that three CEQA exemptions allow them to dispense with preparation
18 of an EIR: (1) a *statutory* exemption under Public Resources Code section 21080(b)(i) and CEQA
19 Guidelines [14 C.C.R.; “Guidelines”] section 15273(a)(1) (exempting modifications of rates for the
20 purpose of meeting operating expenses); (2) a *statutory* exemption under Guidelines section 15261
21 (exempting certain pre-1970 projects as ongoing projects) and (3) a *categorical* exemption for existing
22 facilities under CEQA Guidelines [14 C.C.R.; “Guidelines”] section 15301. These exemptions do not
23 apply. Additionally, the exceptions under Guidelines sections 15300.2(b) and (c) to the latter, section
24

25 ¹ The Proposed Contracts would approve the following Central Valley Project Water
26 Service Contract numbers: (1) 14-06-200-495-A-IR3; (2) 14-06-200-8018-IR13-B; (3) 7-07-20-
27 W0055-IR13-B; (4) 14-06-200-3365A-IR13-B; (5) 14-06-200-8092-IR13; and (6) 14-06-200-
28 3365-IR13-C; (collectively, the “Proposed Contracts,” or the “Project”). Westlands Water
District approved contracts (1) and (2); Westlands Water District, Distribution District No. 1
approved contracts (3) through (5) inclusive; and Westlands Water District, Distribution District
No. 2 approved contract (6).

1 15301 categorical exemption, do apply. Therefore, petitioners ask this Court to set aside respondents'
2 approvals of both the purported exemptions and the underlying Proposed Contracts, and order an EIR to
3 be prepared.

4 VENUE AND JURISDICTION

5 3. This Court has jurisdiction over this proceeding pursuant to Code of Civil Procedure
6 sections 526 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandate), and 1094.5
7 (administrative mandate); Public Resources Code sections 21168 and 21168.5; and article VI, section 10
8 of the California Constitution.

9 4. Venue is proper in this Court pursuant to Code of Civil Procedure sections 394 (actions
10 against local agencies) and 395 (actions generally).

11 5. Pursuant to Code of Civil Procedure section 388, petitioners are serving the California
12 Attorney General with a copy of this Verified Petition and Complaint. Consistent with Public Resources
13 Code section 21167.5, petitioners timely served respondents with notice of this suit. Although not
14 required by Public Resources Code section 21167.6.5, petitioners have also named the Bureau as a real
15 party in interest and timely served this Verified Petition and Complaint on the Bureau. The Bureau is
16 neither a necessary party under Code of Civil Procedure section 389(a) nor an indispensable party under
17 Code of Civil Procedure section 389(b).

18 PARTIES

19 6. Petitioner NORTH-COAST RIVERS ALLIANCE ("NCRA") is a non-profit
20 unincorporated association with members throughout Northern California. NCRA was formed for the
21 purpose of protecting California's rivers and their watersheds from the adverse effects of excessive water
22 diversions, ill-planned urban development, harmful resource extraction, pollution, and other forms of
23 degradation. Its members use and enjoy California's rivers and watersheds for recreational, aesthetic,
24 scientific study, and related non-consumptive uses. The interests of NCRA and its members have been,
25 are being, and unless the relief requested herein is granted, will be adversely affected and injured by
26 respondents' approval of the Project and failure to complete an EIR, and by the Project's consequent
27 unexamined and inadequately mitigated impacts on the environment.

28 7. Petitioner FRIENDS OF THE RIVER was founded in 1973 and is incorporated under the

1 non-profit laws of the State of California, with its principal place of business in Sacramento, California.
2 Friends of the River has more than 5,000 members dedicated to the protection, preservation, and
3 restoration of California's rivers, streams, watersheds, and aquatic ecosystems. Friends of the River has
4 been involved in activities to protect and restore the Sacramento-San Joaquin Delta for more than 30
5 years. Many of Friends of the River's members recreate on California rivers and in the Delta. The
6 interests of Friends of the River and its members have been, are being, and unless the relief requested
7 herein is granted, will be adversely affected and injured by respondents' approval of the Project and
8 failure to complete an EIR.

9 8. Petitioner SAVE THE AMERICAN RIVER ASSOCIATION ("SARA") was founded in
10 1961 and is incorporated as a public benefit charitable organization under the non-profit laws of the State
11 of California. SARA's original mission was to rally the citizens and elected officials of Sacramento
12 County to create, fund, maintain, and manage what is now the American River Parkway. Today, SARA
13 is the leading advocate for protecting the Lower American River and American River Parkway, and
14 monitoring and responding to both land and water issues that potentially threaten these irreplaceable
15 public resources. SARA strives to live up to its motto: *Guardians of the American River and Parkway*
16 *since 1961*. SARA has a vital interest in this lawsuit because American River water is exported and used
17 on the west side of the southern San Joaquin Valley. SARA supports the cause of clean water for fish
18 and wildlife, including the fish that spawn in the American River and are often adversely affected by
19 downstream uses such as respondents' importation of over one million acre feet of water annually from
20 the Delta.

21 9. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a
22 non-profit corporation organized under the laws of the State of California. CSPA has thousands of
23 members who reside and recreate throughout California. CSPA's members are citizens who, in addition
24 to being duly licensed sport fishing anglers, are interested in the preservation and enhancement of
25 California's public trust fishery resources and vigorous enforcement of California's environmental laws.
26 CSPA members have been involved for decades in public education and advocacy efforts to protect and
27 restore the public trust resources of California's rivers. CSPA members use California's rivers and the
28 Delta for recreation, scientific study and aesthetic enjoyment. The interests of CSPA and its members

1 have been, are being, and unless the relief requested herein is granted, will be adversely affected and
2 injured by respondents' approval of the Project and failure to complete an EIR.

3 10. Petitioner WINNEMEM WINTU TRIBE is a Native American Tribe whose aboriginal
4 territory includes the upper watersheds of the Central Valley Project, including the McCloud and
5 Sacramento Rivers. Many of these lands were inundated by construction of Shasta Dam. Petitioner
6 WINNEMEM WINTU TRIBE was traditionally dependent on salmon fishing for both subsistence and
7 cultural purposes, and maintains an exceptional interest in the continued viability of California's salmon
8 runs, which pass through the Sacramento-San Joaquin River Delta ("Delta"). Petitioner WINNEMEM
9 WINTU TRIBE is a strong proponent of Delta restoration, and is adversely affected by the degradation of
10 water quality, destruction of species, and other environmental harms that approving the Proposed
11 Contracts will cause.

12 11. Petitioners have authorized their attorneys to file this lawsuit on their behalf to vindicate
13 their substantial beneficial interest in securing respondents' compliance with the laws whose violation is
14 alleged herein.

15 12. Petitioners have performed any and all conditions precedent to the filing of this Verified
16 Petition and have exhausted any and all available administrative remedies to the extent required by law.

17 13. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law in
18 that, unless this Court issues its writ of mandate setting aside respondents' approvals of the underlying
19 Proposed Contracts, and ordering them to comply with the laws whose violation is alleged herein, the
20 environmental interests of petitioners and the public that are protected by those laws will be substantially
21 and irreparably harmed. No monetary damages or other legal remedy could adequately compensate
22 petitioners for the harm to their beneficial interests, and ultimately to the environment, occasioned by
23 respondents' unlawful conduct.

24 14. Respondents Westlands Water District, Westlands Water District – Distribution District
25 No. 1, and Westlands Water District – Distribution District No. 2 (collectively, "Westlands") are
26 California public agencies charged by law with serving as the lead agency under CEQA for the approvals
27 being challenged, and assuring compliance with CEQA and the other laws whose violation is alleged
28 herein. On or about July 19, 2011, Westlands purported to approve the six Proposed Contracts

1 challenged herein at a single regular meeting of its Board of Directors. On July 21, 2011, Westlands filed
2 six Notices of Exemption (“NOEs”) with the Fresno and Kings County Clerks, which purported to
3 exempt the Proposed Contracts from CEQA review. Westlands is charged by law with responsibility for
4 assuring compliance with the requirements of CEQA and Code of Civil Procedure sections 1085 and
5 1094.5 with respect to its approval of the six Proposed Contracts. In purporting to approve the six
6 Proposed Contracts and NOEs, Westlands failed to comply with these laws.

7 15. The United States Bureau of Reclamation is a federal agency that operates the Central
8 Valley Project, the source of Westlands’ water. Petitioners are informed and believe, and thereon allege,
9 that the Bureau is considering its potential acceptance of and entry into the Proposed Contracts.

10 16. Petitioners are unaware of the true names and capacities of respondents DOES I-XX, and
11 therefore sue such respondents herein by fictitious names. Petitioners are informed and believe, and
12 based on such information and belief allege, that the fictitiously named respondents are also responsible
13 for approval of the six Proposed Contracts and NOEs and their threatened injury to petitioners. When the
14 true identities and capacities of these respondents have been determined, petitioners will, with leave of
15 the Court if necessary, amend this Verified Petition to insert such identities and capacities.

16 17. Petitioners are unaware of the true names and capacities of real parties in interest DOES
17 XXI-C, and therefore sue such real parties in interest herein by fictitious names. Petitioners are informed
18 and believe, and based on such information and belief allege, that the fictitiously named real parties in
19 interest are also responsible for approval of the six Proposed Contracts and NOEs and their threatened
20 injury to petitioners, or otherwise have a direct economic interest in approval of the six Proposed
21 Contracts and NOEs in a manner adverse to petitioners’ interests. When the true identities and capacities
22 of these real parties in interest have been determined, petitioners will, with leave of the Court if
23 necessary, amend this Verified Petition to insert such identities and capacities.

24 **FACTUAL BACKGROUND**

25 18. The Project involves Westlands’ approval of six Proposed Contracts providing for two
26 years of Central Valley Project water service to Westlands. The Central Valley Project is a federal water
27 project operated by the United States Bureau of Reclamation. Westlands provides its customers with
28 water from the Central Valley Project via the San Luis Canal and the Coalinga Canal.

1 19. The environmental devastation wrought on the Sacramento-San Joaquin River Delta
2 (“Delta”) by Central Valley Project operations generally, and Westlands’ diversions specifically, has
3 become patent in recent years. The importation of up to over 1 million acre feet annually from the Delta
4 to Westlands has caused substantial harm to the Delta’s imperiled fisheries. Boron, selenium, and salt
5 pollution in the Delta originates in part from return flow discharged by Westlands and surrounding water
6 contractors.² Key fish species are being imperiled by Delta water exports and contaminated return flows,
7 including winter, spring, and fall runs of Chinook salmon, fall runs of steelhead trout, and numerous
8 smaller fish including the Delta smelt, longfin smelt, and threadfin shad. Westlands’ water imports
9 account for nearly one fifth of all Delta water exports.³ These Proposed Contracts would, if implemented,
10 have adverse effects on the Delta, including but not limited to degraded water quality; harmful impacts on
11 sensitive and/or endangered species; loss of fish and wildlife habitat; and impaired public recreation.

12 20. The lands of the Central Valley served by Westlands also have long-standing drainage and
13 groundwater contamination problems. Westlands’ lands have “high selenium/Total Dissolved Solid
14 (TDS) concentrations.” EPA Comments, Attachment A, p. 1. Irrigation run-off and drainage have the
15 effect of moving selenium and salt contaminants down gradient toward the San Joaquin River and
16 ultimately into the Delta and Bay. This mobilization leads to adverse effects on “important resources
17 such as the Grassland Ecological Area . . . and the San Joaquin River.” *Id.* The San Joaquin River is
18 listed as an impaired water body on the Clean Water Act section 303(d) (33 U.S.C. § 1313(d)) list, in part
19 because of selenium pollution. On or about December 22, 2009, the Bureau elected to waive selenium
20 standards and revoked its plan to terminate the current problematic drainage system for Westlands’
21 service area, further exacerbating the harm from Westlands’ water use practices.

22 21. Irrigation and the associated pollutant mobilization also leads to groundwater
23

24 ² United States Environmental Protection Agency, Region IX, Comments on the Draft
25 Environmental Impact Statement (DEIS) and Supplemental Information for Renewal of Long
26 Term Contracts for San Luis Unit Contractors (April 17, 2006) (“EPA Comments”), Attachment
27 A, p. 2 (*citing* California Regional Water Quality Control Board Sept. 10, 2005 Salinity/Boron
28 TMDL study; *and* South Delta Improvement Program Draft Environmental Impact Statement,
October 2005). Westlands is a member of the San Luis Unit.

³ *Id.* at Attachment A, pp. 2-3.

1 contamination. As the Final Environmental Assessment for these Proposed Contracts notes,⁴ “[t]he salts
2 in . . . irrigation water, and soil salts leached from the unsaturated zone, increase[] salt and selenium
3 concentrations in groundwater.” Overall, “[t]here is potential for the water deliveries to exacerbate
4 mobilization of pollutants . . . into areas where there could be fish and wildlife exposure.” EPA
5 Comments, Attachment A, p. 1.

6 22. Selenium from agricultural drainage from Westlands’ service area has accumulated in and
7 harmed birds and other animals. For this reason, “Contract renewals” in the San Luis Unit “could result
8 in adverse effects to [federally-]listed species.”⁵ Federally-listed species that will potentially be adversely
9 affected by the Proposed Contracts include, but are not limited to, the San Joaquin Kit Fox, California
10 least tern, Giant garter snake, Blunt-nosed leopard lizard, California Jewelflower, and the San Joaquin
11 Woolly-threads. FWS Comments, p. 2.

12 23. Westlands increased the volume of its CVP deliveries by 142,000 acre-feet per year
13 (“afy”) in 1981. Subsequent to that substantial increase, Westlands has been expanding and accelerating
14 its acquisitions of water rights, and resultant diversions, exacerbating the cumulative effects of the
15 Proposed Contracts. For example, Westlands has, over the past twelve years, entered into agreements for
16 assignment of CVP water from other water entities in the amounts of 6,260 afy and 4,198 afy from Mercy
17 Springs Water District, 27,000 afy from Broadview Water District, 2,500 afy from Centinella Water
18 District, and 2,990 afy from Widren Water District. In 2007, Westlands purchased the Bollibokka Club
19 on the lower McCloud River, for the purpose of facilitating further increases in its CVP deliveries if the
20 Bureau decided to raise Shasta Dam, dramatically expanding Westlands’ water supply. The Bollibokka
21 Club site is the home of 26 Winnemem Wintu tribal villages and burial grounds, which would be
22 inundated if the dam were raised. In short, Westlands is continuing to expand its CVP deliveries far
23 beyond the scope of its original contracts with the Bureau as of November 23, 1970, when CEQA was
24

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26 ⁴ Bureau of Reclamation, Final Environmental Assessment, San Luis Unit Water Service
Interim Renewal Contracts 2010-2013 (February 2010), p. 20.

27
28 ⁵ United States Department of the Interior, Fish and Wildlife Service, “San Luis Interim
CVP Water Service Contract Renewal for the Period January 1, 2008 through February 29,
2011,” (August 20, 2007) (“FWS Comments”), p. 2.

1 adopted. It uses these CVP deliveries to irrigate its selenium- and salt-contaminated soil, from which that
2 contamination continues to spread ever-farther.

3 24. Westlands' service area also encompasses the site of Britz Fertilizers, Inc., a state-listed
4 hazardous waste site. The site contains contaminated groundwater and soil, which is spreading. Just as
5 irrigation has the effect of mobilizing selenium and salt pollution, so too if irrigation is delivered pursuant
6 to these Proposed Contracts it will raise the water table underlying the Britz Fertilizers site, enabling the
7 contaminated groundwater underlying the site to spread to and contaminate surrounding areas to an even
8 greater extent.

9 25. In sum, approval of the Proposed Contracts may cause significant harm to the
10 environment. This harm includes but is not limited to loss, fragmentation, and degradation of plant, fish,
11 avian, and other wildlife habitat in the Delta; degradation and contamination of ground- and surface water
12 resources via the mobilization of selenium and other pollutants; loss of biological resources, including
13 harm to federally-listed endangered and threatened species; degradation and contamination of ground-
14 and surface water from the spreading of hazardous wastes; and soil contamination.

15 **FIRST CAUSE OF ACTION**

16 **(Violation of CEQA for Inadequate Environmental Review)**

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

18 26. The paragraphs set forth above are realleged and incorporated herein by reference.

19 27. Petitioners bring this First Cause of Action pursuant to Public Resources Code sections
20 21168 and 21168.5, on the grounds that Westlands failed to act in accordance with law, and committed a
21 prejudicial abuse of discretion, in that it considered and approved the six Proposed Contracts without
22 undertaking an analysis of their potential environmental impacts, as required by CEQA. In approving the
23 Proposed Contracts, Westlands purported to find, instead, that its actions were exempt from CEQA.

24 28. Westlands and its two Distribution Districts are each a "public agency" within the
25 meaning of CEQA. Pub. Res. Code § 21063. Westlands' actions approving and carrying out the
26 Proposed Contracts are subject to the requirements of CEQA.

27 29. CEQA requires public agencies to conduct environmental review prior to the time the
28 agency approves any project that may have a significant impact on the environment. Pub. Res. Code §§

1 21002.1, 21061, 21100, 21151; Guidelines § 15004(a). Under CEQA, the term “project” means the
2 “whole of an action, which has a potential for resulting in either a direct physical change in the
3 environment, or a reasonably foreseeable indirect physical change in the environment.” Guidelines §
4 15378(a). The term “project” refers to the “activity which is being approved and which may be subject to
5 several discretionary approvals by government agencies” and not the government approvals themselves.
6 *Id.* § 15378(c).

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

10 31. Westlands’ consideration and approval of the Proposed Contracts constitutes the “approval
11 of a project” which may cause either a direct physical change in the environment, or a reasonably
12 foreseeable indirect physical change in the environment, within the meaning of CEQA. Pub. Res. Code §
13 21065. Accordingly, Westlands was required to comply with CEQA prior to taking any action to approve
14 the Proposed Contracts.

15 32. After determining that an activity qualifies as a “project” under CEQA, the agency must
16 determine whether there is an applicable CEQA exemption. Westlands claims three CEQA exemptions
17 allow it to avoid environmental review: (1) an exemption under Public Resources Code section
18 21080(b)(8) and Guidelines section 15273(a)(1) (exempting modifications of rates for the purpose of
19 meeting operating expenses), (2) an exemption under Guidelines sections 15261 (exempting certain pre-
20 1970 projects) and (3) an exemption for existing facilities under Guidelines section 15301. These
21 exemptions are inapplicable.

22 33. Public Resources Code section 21080(b)(8) and Guidelines section 15273(a)(1) do not
23 apply because this Project is not primarily concerned with the modification of rates to meet operating
24 expenses. In any event, this exemption would only operate to exempt the actual rate modifications
25 themselves from environmental review. *See Surfrider Found’n v. California Coastal Comm’n* (1994) 26
26 Cal.App.4th 151, 156 (holding that imposition of parking fees at beaches was exempt under § 15273(a),
27 but that the installation of boxes to collect the fees was not). The widespread environmental
28 consequences that will accompany implementation of the Proposed Contracts are due to Westlands’

1 decision to *provide water* to its users for the next two years, not the *rates* that Westlands charges its users.

2 34. Guidelines section 15261, the ongoing projects exemption, states that “if a project being
3 carried out by a public agency was approved prior to November 23, 1970,” the project is exempt unless
4 *either* (1) a “substantial portion” of the initially allocated funds for the project have not yet been spent,
5 and it is “still feasible to modify the project to mitigate” its potential environmental impacts “or to
6 choose feasible alternatives to the project,” *or* (2) “a public agency proposes to modify the project in such
7 a way that the project might have a new significant effect on the environment.” Westlands claims this
8 exemption applies to all of the Proposed Contracts except one.⁶

9 35. The ongoing projects exemption is inapplicable for many reasons:

10 a. First, here the particular “project” being approved here is the *future provision of*
11 *CVP water to Westlands’ customers for two years* under the Proposed Contracts. This future provision of
12 water was not “approved prior to November 23, 1970.” Guidelines § 15261(a). Therefore the ongoing
13 projects exemption does not apply.

14 b. Second, the exemption is inapplicable because “a substantial portion of the public
15 funds allocated for the project have not been spent” and because the project may be modified to mitigate
16 its impacts. *Id.* § 15261(a)(1). In fact, at the time of approval, *none* of the funds for the Project had been
17 spent. Since the future water deliveries can be modified to avoid adverse impacts (as none of the
18 diversions have yet taken place under the new Contracts), and alternatives to those deliveries can readily
19 be formulated to minimize environmental harm, the ongoing projects exemption does not apply. *Id.*

20 c. Third, the exemption is inapplicable because Westlands is “propos[ing] to modify
21 the project in such a way that the project might have a new significant effect on the environment.”
22 Guidelines § 15261(a)(2). Because each prior contract was limited to a defined period of time,
23 respondents’ purported approval of these Proposed Contracts to extend this period into the future
24 necessarily means that the resulting Project impacts are “new” impacts within the meaning of CEQA
25 Guideline sections 15261(a)(2). Additionally, Westlands has expanded its CVP deliveries by at least
26 184,948 afy subsequent to November 23, 1970, when CEQA was adopted. Guidelines § 15261(a)(2).

27
28 ⁶ Westlands does not claim this exemption for the contract numbered (3) in footnote 1
(that is, Contract #7-07-20-W0055-IR13-B).

1 This substantial increase in the scope of Westlands' CVP deliveries causes a commensurate increase in
2 the severity of their environmental impacts. Furthermore, (1) new information is available about the
3 effects of the Project on the environment, documenting more severe adverse effects of Westlands'
4 diversions on the health of the already-fragile Delta than previously known; and (2) the Bureau recently
5 revoked its plan to terminate the problematic Grasslands Bypass draining Westlands' service area and
6 waived selenium standards otherwise applicable to that drainage. These changes in combination with the
7 substantial increases in the scope of Westlands' CVP deliveries since 1970, result in newly exacerbated,
8 significant environmental effects.

9 36. Finally, Guidelines section 15301, the existing facilities categorical exemption, does not
10 apply. The Project does not involve the "operation . . . leasing, [or] licensing . . ." of existing "facilities."
11 The Project here is the approval of the Proposed Contracts, not the continued operation of existing
12 facilities. Moreover, this exemption does not apply unless "the project involves negligible or no
13 expansion of an existing use." Guidelines section 15301. This project would (1) "expand" Westlands'
14 water deliveries by two years; and (2) physically expand the amount of land irrigated due to Westlands'
15 increases in the scope of its CVP deliveries, as detailed above. Therefore, the claimed exemptions do not
16 apply.

17 37. Even assuming contrary to the facts and law that Westlands' claimed section 15301
18 categorical exemption applied, CEQA Guidelines sections 15300.2(b) and (c) provide exceptions to this
19 categorical exemption, which apply here. CEQA Guidelines section 15300.2(b) provides that categorical
20 exemptions are inapplicable "when the cumulative impact of successive projects of the same type in the
21 same place, over time, is significant." This exception applies for several reasons. First, the
22 environmental impact of Westlands' extended series of two-year renewal contracts, particularly in light of
23 the expanding scope of its CVP deliveries over time, has never been studied. Even a single two-year
24 contract is likely to have significant environmental impacts, as detailed above. Second, the Delta
25 ecosystem is extremely fragile, and its health is declining to the point where it may be on the verge of
26 collapse. Yet the cumulative environmental impacts of the Proposed Contracts, when added to the other
27 CVP diversions, have never been ascertained. Third, the effects of selenium and other pollutant
28 contamination in Westlands' service area are exacerbated by the long history of such contamination.

1 Fourth, Westlands' continuing expansion of the scope of its CVP deliveries is exacerbating the
2 cumulative environmental effects of the Proposed Contracts.

3 38. CEQA Guidelines section 15300.2(c) provides that exemptions are inapplicable "where
4 there is a reasonable possibility that the activity will have a significant effect on the environment due to
5 unusual circumstances." The Proposed Contracts approved by Westlands fall under this "unusual
6 circumstances" exception because of, *inter alia*, (1) the high selenium and salinity concentrations in the
7 soils served by Westlands, (2) the presence of the Britz Fertilizers hazardous waste site within Westlands'
8 service area, and (3) the contribution of the Proposed Contracts to the likely extinction of the Delta Smelt,
9 a threatened species under the Endangered Species Act. These factors, among others, constitute an
10 "unusual circumstance" that makes it "reasonabl[y] possib[le]" that the Proposed Contracts will lead to
11 significant effects on the environment. These reasonably possible significant impacts (discussed above)
12 include, but are not limited to, biological resource impacts, water quality impacts, hazardous waste
13 impacts, and soil impacts.

14 39. In invoking the foregoing CEQA exemptions to approve the Proposed Contracts,
15 Westlands abused its discretion under CEQA. If there is any possibility that the action being approved
16 may cause a significant effect on the environment, directly or indirectly, the approval must comply with
17 CEQA. The Proposed Contracts threaten a number of "reasonably foreseeable indirect physical change[s]
18 in the environment" and thus CEQA review was required before their approval.

19 40. If Westlands is not ordered to set aside its approval of the Proposed Contracts, petitioners
20 and the public will be irreparably harmed. Petitioners have no plain, speedy, and adequate remedy in the
21 ordinary course of law in that, unless this Court issues its writ of mandate or injunctive relief vacating
22 Westlands' approvals and requiring Westlands to comply with CEQA, the environment will be harmed.
23 No monetary damages or other legal remedy could adequately compensate petitioners for the harm to
24 essential environmental reviews and environmental quality threatened by Westlands' unlawful approvals.

25 41. An actual controversy exists between petitioners and Westlands. Petitioners contend that
26 Westlands has acted in violation of CEQA as alleged herein and must therefore vacate and set aside its
27 approvals of the Proposed Contracts. A judicial resolution of this controversy is therefore necessary and
28 appropriate.

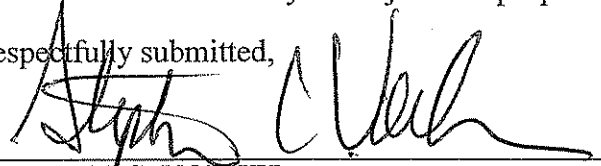
PRAYER FOR RELIEF

WHEREFORE, petitioners pray for relief as follows:

1. For interlocutory and permanent injunctive relief restraining respondents from taking any action to carry out the Project pending, and following, the hearing of this matter;
2. For a peremptory writ of mandate directing respondents to set aside and vacate their approval of the Proposed Contracts;
3. For declaratory relief declaring the Proposed Contracts to be unlawful;
4. For a peremptory writ of mandate directing respondents to suspend all activity under the Proposed Contracts that could result in any change or alteration in the physical environment until they have taken all actions necessary to bring their approval of the Proposed Contracts into compliance with CEQA;
5. For attorneys' fees under Code of Civil Procedure section 1021.5;
6. For costs incurred in this action; and
7. For such other equitable or legal relief as the Court may deem just and proper.

Dated: August 24, 2011

Respectfully submitted,

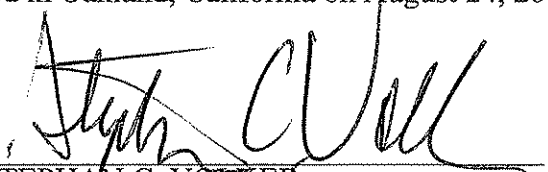


STEPHAN C. VOLKER
NORTH COAST RIVERS ALLIANCE, FRIENDS OF THE RIVER, SAVE THE AMERICAN RIVER ASSOCIATION, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, and the WINNEMEM WINTU TRIBE

VERIFICATION

1
2 I, Stephan C. Volker, am the attorney for petitioners/plaintiffs in this action. I make this
3 verification on behalf of the petitioners/plaintiffs because such parties and their representatives are absent
4 from the county in which my office is located. I have read the foregoing Verified Petition for Writ of
5 Mandate and Complaint for Injunctive Relief and know its contents. The facts therein alleged are true
6 and correct to the best of my knowledge and belief, and are based on documents within the public records
7 underlying the approvals herein challenged.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct, and that this Verification was executed in Oakland, California on August 24, 2011.

10
11 
12 STEPHAN C. VOLKER