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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

CALIFORNIA WATER IMPACT NETWORK, CALIFORNIA SPORT-FISHING PROTECTION ALLIANCE, and AQUALLIANCE, Petitioners and Plaintiffs, vs. DELTA STEWARDSHIP COUNCIL and DOES 1-100, inclusive , Respondent and Defendant.	**CASE NO.:** **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **(Pub. Resources Code, §§ 21168, 21168.5; Code Civ. Proc.,§§ 1060, 1085, 1094.5; Water Code, § 85000 et seq.)** **CEQA CASE**

INTRODUCTION

1. The Sacramento-San Joaquin Delta (the "Delta") is the largest estuary on the west coast of the Americas. The Delta supports some of the most productive farmland in the world, wineries and other agriculture-related enterprises, a robust sports-fishing and recreation industry, many cities and communities, and hundreds of aquatic and terrestrial species (some of which are unique to the Delta and at risk of extinction). Rich in history and culture, the Delta is also a core component of California's water system, from which water flows to rural and urban users throughout California. The Delta is a critical component of the San Francisco Bay Delta Estuary.

2. Finding that "the Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable," the California Legislature passed the Sacramento-San Joaquin Delta Reform Act of 2009 ("Delta Reform Act") (Wat. Code, § 85000 et. seq.). The Delta Reform Act aptly describes the Delta as "a critically important natural resource for California and the nation" which "serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America." (Wat. Code, § 85002.)

3. The Delta Reform Act resulted in formation of the California Delta Stewardship Council ("Council"). (Wat. Code, §§ 85200, et seq.) Chief among the Council's tasks was preparation of a comprehensive long-term management plan for the Delta – the Delta Plan. The Council approved the May 2013 Proposed Final Draft Delta Plan ("2013 Delta Plan") and adopted Regulations Implementing the Delta Plan (Cal. Code Regs., tit. 23, §§ 5001-5016))) on May 16, 2013, and May 17, 2013, respectively.[1]

[1] The Delta Plan contains 14 regulatory policies, as well as 73 non-binding recommendations. The 14 regulatory policies became Regulations after approval by the Office of Administrative Law.

4. Seven lawsuits alleging failures to follow the statutory mandates of the Delta Reform Act, the California Environmental Quality Act ("CEQA"), and other claims against the 2013 Delta Plan were filed and the cases were heard in Sacramento County Superior Court in a coordinated proceeding. (See JCCP 4758.)

5. On October 21, 2016, Judge Michael Kenny ruled that the 2013 Delta Plan violated the Delta Reform Act because it did not reduce Delta export reliance, promote conveyance options, reduce harm from invasive species, restore natural flows, or increase water supply reliability. On November 23, 2016, the trial court issued a writ of mandate, ordering the 2013 Delta Plan be vacated and amended to include quantified and measurable targets associated with reducing reliance on the Delta, reducing environmental harm from invasive species, restoring natural flows, increasing water supply reliability, and providing a flow policy. (See JCCP 4758, Peremptory Writ of Mandate in *CWIN et al. v. DSC*. The writ also ordered that the Delta Plan must promote options for new and improved conveyance and storage infrastructure. That ruling is currently the subject of an appeal by the Council, as well as several cross appeals, all pending in the Court of Appeal for the Third Appellate District.

6. Rather than directly comply with the trial court's writ of mandate, the Council purported to revise the Delta Plan due to changes in circumstances and prior commitments.

7. The Council issued a Notice of Availability for the Delta Plan Amendments Draft Program Environmental Impact Report on December 6, 2017.

8. The Delta Plan Amendments ("Amendments") include changes to the Delta Levee Investment and Risk Reduction Strategy ("DLIS") in Chapter 7, the Delta Conveyance, Storage Systems, and the Operation of Both ("CSO") in Chapter 3, and the Performance Measures ("PM") in Appendix E of the Delta Plan.

9. The Council approved the Final Delta Plan Amendments Programmatic Environmental Impact Report ("DPA PEIR") and the final version of the Amendments

on April 26, 2018; the Council issued a Notice of Determination that same day. At the April 26 hearing, the Council approved the DLIS Amendment to RR P1 as a Policy, meaning it will become a binding regulation if it is approved by the Office of Administrative Law. The CSO Amendment to WR R12 was adopted as a recommendation.

10. The Amendments fail to comply with key provisions of the Delta Reform Act and other enactments designed to protect the Delta. In an attempt to push the Delta Tunnels Project (a.k.a. the "California WaterFix"), the Council has again failed to adhere to statutory requirements intended to protect the Delta, its native species, and existing California law..

11. This action challenges the Council's decision to approve the Amendments, including its Policies and Recommendations. It also challenges the Council's certification of the DPA PEIR pursuant to CEQA (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, §15000 et seq. ("CEQA Guidelines").

12. Petitioners have particular interests in protecting the Delta, including state and local environmental and public trust interests and whose members include, private landowners and others whose land and water uses and other activities within the Delta are adversely affected by the Council's adoption of Delta Plan Amendments that conflict with statutory mandates, and by the Council's failure to disclose the reasonably foreseeable environmental consequences of implementing the Amendments, as required by CEQA. Over many years, Petitioners herein have demonstrated their sustained commitment to the Delta and participated in the various Delta planning processes, including the Delta Plan and the current Amendments.

13. The Council acknowledges that "investments that improve Delta Levees towards applicable standards and guidelines are critical to protecting lives, property, and State interests." (DPA PEIR, Appen. C, p. 44.) The Delta Reform Act sets forth the "coequal goals" that include protecting and enhancing the Delta as an evolving place and

improving flood protection. (Wat. Code, § 85054.) Yet the DLIS Amendments would decrease potential funding for a significant number of levees and increase the risks to said lives, property, and interests. This inadequate emphasis on necessary levee maintenance and repair is impermissible under the Delta Reform Act and other provisions of California law.

14. RR P1 sets a static priority scheme for levee funding wherein available discretionary funding would have to go towards higher priority islands or tracts before those lower on the priority list. By locking this funding scheme into a regulatory policy, the Council is ensuring the inefficient allocation of funds by locking out a majority of islands and tracts. "Every levee is important to those whose safety or property is protected." (DPA PEIR, App. C, p. 45.) The DLIS Amendments merely pay lip service to this axiom while clearly stating that not every levee is important to the Council. As it stands, many levees already fail to meet adequate minimum engineering standards. Shutting these levees out from funding that would otherwise be available creates flood risks, endangers lives and property, and violates the coequal goals of the Delta Reform Act.

15. The DLIS Amendments also continue to misrepresent the effectiveness of setback levees. Relocating levees off of existing foundations comes with technical and financial difficulties while creating new risks of instability. Myriad potential dangers are associated with setbacks and rerouting flood waters, and the DPA PEIR does not adequately address these impacts to human communities, biological resources, or water quality. Moreover, numerous potential impacts of the DLIS Amendments are inadequately evaluated and mitigated in violation of CEQA, including inadequate analysis of loss of riparian and terrestrial habitat, water quality degradation, loss of property, and damage to agriculture.

16. The CSO Amendments evince a clear and improper preference for the Delta Tunnels Project. The Delta Reform Act provides a series of checks and balances

by which a project such as the Delta Tunnels would become part of the Delta Plan. The Delta Plan was created to ensure that covered actions like the Delta Tunnels further the coequal goals. And yet, the Amendments blatantly support the Delta Tunnels, failing to reconcile that project with the Delta Reform Act's checks and balances. As a result, the CSO Amendments are simply a *post hoc* justification for the Council's preferred isolated conveyance project. In its Ruling, attached as the Superior Court specifically found that recommending a single conveyance project violated the Delta Reform Act and the Peremptory Writ of Mandate in *CWIN et al., v. DSC* required the Delta Plan to "promote *options* for new and improved infrastructure relating to the water conveyance in the Delta". The Council's pre-decisional preference for the Delta Tunnels Project over other conveyance options (or groups of options) in the CSO Amendments violates the Delta Reform Act.

17. The DPA PEIR barely discusses the known potential adverse effects of the Delta Tunnels, instead relying almost entirely on the analysis of the Bay Delta Conservation Plan/California WaterFix Environmental Impact Report/Environmental Impact Statement "Delta Tunnels FFEIR/S"), despite the pendency of nearly 20 separate CEQA lawsuits challenging the adequacy of that document. The DPA PEIR then impermissibly relies on the application of regulatory standards to mitigate and minimize significant impacts, even though the underlying impacts have never been adequately analyzed.

18. The CSO Amendments' preference of the Delta Tunnels directly contradicts the Delta Reform Act's coequal goals adopted by the California legislature in 2009. Construction and operation of the Delta Tunnels would cause massive ecological damage to the Delta, degrade the Delta as a place, and lead to increased reliance on Delta exports. Any language in the CSO Amendments that recommends consideration of means to reduce these harmful impacts are considered by the Council to be nonbinding. Thus,

the CSO Amendments unequivocally promote the Delta Tunnels, without enforcement of the coequal goals and other Delta Reform Act requirements.

19. The Superior Court also ordered the Council to include quantified and measurable targets that demonstrably reduce reliance on the Delta, reduce harm from invasive species, increase water supply reliability, and include a flow policy. The Performance Measure ("PM") Amendments fail to meet this mandate, and thus also violate the Delta Reform Act.

20. The PM Amendments are unenforceable due to delayed compliance, vagueness, and internal inconsistencies. Unenforceable performance measures cannot demonstrably reduce reliance on or harm to the Delta, and the Council does not attempt to argue otherwise. Instead, the Council essentially concedes that increasing water exports (under the guise of increasing water supply "reliability") is fundamentally at odds with reducing reliance on the Delta and treats increasing exports as the more important outcome, despite the Delta Reform Act's mandates.

21. Despite being the work-product of a million-dollar EIR preparation contract, the DPA PEIR is replete with errors that render it an inadequate document under CEQA. Among other defects, the DPA PEIR is a confusing and vague document that lacks sufficient detail for meaningful review. The project description is inaccurate and unstable, and the impact analysis is fragmented. Numerous impacts from each of the Amendments are inadequately analyzed, including impacts on public trust resources and flood risks. The DPA PEIR impermissibly avoids analysis of the likely impacts of the Delta Tunnels Project, despite the Council's endorsement of that project. Rather, the DPA PEIR adopts the conclusions of the Delta Tunnels FEIR/S, forcing readers to search for relevant information in that 80,000-page document.

22. Because fundamental defects of law permeate the Amendments, they must be set aside. Petitioners accordingly request that this Court issue a writ of mandate directing the Council to vacate and set aside its approval of the Amendments and its

certification of the DPA PEIR. Petitioners also seek declaratory relief in the form of a judicial decree ruling that the Council's actions: (1) violated CEQA and (2) exceeded or conflicted with the Council's statutory authority and duties, including its authority and duties under the Delta Reform Act and other laws.

23. As there is no plain, speedy or adequate remedy in the course of law, a writ is required to compel the Council to set aside its certification of the DPA PEIR and approval of the Amendments and associated actions.

THE PARTIES

24. Petitioner CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a California non-profit public benefit organization with its principal place of business in Stockton, California. CSPA's organization purpose is the protection, preservation, and enhancement of fisheries and associated aquatic and riparian ecosystems of California's waterways, including Central Valley rivers leading into the Bay-Delta. This mission is implemented through active participation in water rights and water quality processes, education and organization of the fishing community, restoration efforts, and vigorou enforcement of environmental laws enacted to protect fisheries, habitat and water quality. Members of CSPA reside along the Central Valley watershed and in the Bay-Delta where they view, enjoy, and routinely use the Delta ecosystem for boating, fishing, and wildlife viewing. CSPA's members derive significant and ongoing use and enjoyment from the aesthetic, recreational, and conservation benefits of the BayDelta ecosystem.

25. Petitioner CALIFORNIA WATER IMPACT NETWORK ("C-WIN") is a California non-profit public benefit organization with its principal place of business in Santa Barbara, California. C-WIN's organization purpose is the protection and restoration of fish and wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural environmental resources and uses of the rivers and streams of California, including the

Bay-Delta, its watershed and its underlying groundwater resources. C-WIN has members who reside in, use, and enjoy the Bay-Delta and inhabit and use its watershed. They use the rivers of the Central Valley and the Bay-Delta for nature study, recreation, and aesthetic enjoyment.

26. Petitioner AQUALLIANCE ("AquAlliance") is a California public benefit corporation organized to protect Northern California's waters to sustain family farms, recreation opportunities, vernal pools, creeks, rivers, and the Bay-Delta estuary. AquAlliance has members who regularly use the waters of the Delta and its tributaries for recreation, including kayaking, paddling, fishing, and wildlife viewing. AquAlliance members also routinely participate in conservation activities in and around the Bay-Delta estuary and its tributary vernal pools, creeks, and rivers.

27. Petitioners presented comments during the administrative process and hearings on the matters being challenged in this petition and complaint. The petitioners and their members are directly, adversely and irreparably affected, and will continue to be prejudiced by the Council's Delta Plan and actions associated with it, and alleged herein. Such injury will continue until and unless this Court provides the relief prayed for in this Petition and Complaint.

28. Respondent and Defendant Delta Stewardship Council (Council) is an agency of the State of California (Wat. Code Section 85200, subd. (a).) The Council's powers include the power to be sued. (Wat. Code Section 85210, (subd. (a).)

29. The Petitioners are currently unaware of the true names and capacities of Does 1 through 100, inclusive, and therefore sue those parties by such fictitious names. Does 1 through 100, inclusive, are agents of the State government who are responsible in some manner for the conduct described in this Petition, or other persons or entities presently unknown to the Petitioners who claim some legal or equitable interest in the program that is the subject of this action. Petitioners will amend this Petition and Complaint to show the true names and capacities of Does 1 through 100 when such names and capacities become known.

JURISDICTION AND VENUE

30. This Court has jurisdiction over this action pursuant to sections 1060, 1085, and 1094.5 of the California Code of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

31. Venue for this action properly lies in the Sacramento County Superior Court because the Delta Stewardship Council is a state agency based in Sacramento County and the Attorney General, who will be representing the Delta Stewardship Council in this action, has an office in Sacramento County. (Code Civ. Proc., § 401, subd. (1).) Moreover, litigation related to the claims set forth herein is currently pending in the Sacramento County Superior Court (Judicial Council Coordination Proceeding No. 4758).

32. This Petition is timely filed in accordance with Public Resources Code section 21167, subdivision (b) and CEQA Guidelines section 15112.

33. Petitioners have complied with Public Resources Code section 21167.5 by providing written notice of commencement of this action to the Council prior to filing this Petition and Complaint. A true and correct copy of the notice provided pursuant thereto, with proof of service thereof, is attached hereto as Exhibit 1 .

34. This Petition is timely filed in accordance with Public Resources Code section 21167 and CEQA Guidelines section 15112.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. Petitioners have exhausted all administrative remedies by submitting written comments during several stages of the Delta Plan Amendments and the DPA PEIR. All issues raised in this Petition were raised to the Council by Petitioners, other members of the public or public agencies prior to approval of the Delta Plan Amendments and certification of the DPA PEIR.

ELECTION TO PREPARE RECORD

36. Petitioners elect to prepare the record of proceedings in the above-captioned proceeding pursuant to Public Resources Code, § 21167.6, subdivision (b)(2).

STANDING

37. Petitioners have standing to assert the claims raised in this Petition because members of the environmental groups named as Petitioners herein have a direct and beneficial interest in the Council's compliance with the Delta Reform Act, CEQA and other applicable statutes. Petitioners are directly and adversely affected by the Council's approval of the Delta Plan Amendments and by the Council's certification of the DPA PEIR.

IRREPARABLE HARM

38. As result of the Council's approval of the Delta Plan Amendments and certification of the DPA PEIR, Petitioners will suffer great and irreparable environmental harm as described herein. Petitioners have no adequate remedy at law for this irreparable harm.

PUBLIC BENEFIT

39. This action involves enforcement of important rights affecting the public interest. Petitioners will confer a substantial benefit to the citizens of the state of California generally as well as the citizens of the Delta, and therefore will be entitled to an award of reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure.

BACKGROUND FACTS

40. The Delta Reform Act, adopted by the Legislature in 2009, includes substantive protections for the Delta. The Council, in amending the Delta Plan, must comply with the Delta Reform Act's substantive protections and other legal requirements.

41. In pertinent part, the Legislature declared State policy in the Act as follows: "The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. . . ." (Wat. Code, § 85021.)

42. The Delta Plan must further the "coequal goals." (Wat. Code, § 85300, subd. (a).) "'Coequal goals' means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code, § 85054.)

43. Over the course of California's water development history, the Legislature has enacted measures to protect areas in which water serving other parts of the states originates; these are known generally as "the Delta Protection Act" and "area of origin" protections. (Wat. Code, §§ 1215.5, 1216).

44. Water Code sections 12200, et seq., commonly referred to as the Delta Protection Act ("DPA"): (1) require the SWP and CVP to provide salinity control and an adequate water supply for the Delta (Wat. Code, §§ 12201, 12202); (2) prohibit the export of water from the Delta to which in-Delta users are entitled through water rights and water which is necessary for salinity control and an adequate supply "to maintain and expand agriculture, industry, urban and recreational development in the Delta." (Wat. Code, § 12204); and (3) require maintenance of a common pool of water in the interior of the Delta and the operation and management of releases from storage for export to be integrated to the "maximum extent possible" in order to fulfill the objectives of the Act. The objectives of the DPA are to protect Delta water rights, provide salinity control and additionally provide an adequate supply to "maintain and expand agriculture, industry, urban, and recreational development in the Delta."

45. The DPA was contemporaneously interpreted by the Department of Water Resources ("DWR") in the Preliminary Bulletin 76, December 1960 Report to the Legislature as providing at page 12: "In 1959 the State Legislature directed that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided."

46. Water Code section 11460 mandates the prior right to watershed water as follows:

> In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

47. General protections in the Water Code, such as section 1216, ensure that protected areas are not deprived of adequate supplies of water:

> A protected area shall not be deprived directly or indirectly of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area, or any of the inhabitants or property owners therein, by a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

48. The Delta Reform Act, adopted in 2009, expressly states that area of origin and related water rights protections remain in place, unimpaired by other provisions of the Act:

> This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit
> or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505,

10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.

(Wat. Code, § 85031, subd. (a).)

49. Despite these specific protections in the Delta Reform Act and other laws, the Amendments fail to adequately protect the Delta and other areas of origin. In particular, the Amendments fail to include enforceable measures to ensure adequate flows and water quality in the Delta. Moreover, the Delta Plan blindly promotes completion of the Delta Tunnels Project, without regard to its incompatibility with the co-equal goals and the statutory protections afforded the Delta and other areas of origin. The Amendments also fail to protect against flood risks in the Delta.

Relationship of Delta Plan Amendments and Delta Tunnels Project

50. Initially proposed in 2007, the current iteration of the Delta Tunnels Project was included originally as the preferred alternative, Alternative 4, in the BDCP Draft Environmental Impact Report in 2013. Eventually, the habitat conservation plan ("HCP") component of the project was dropped, and the project proponents announced the new Alternative 4A as the proposed project, dubbing it the "California WaterFix." The HCP component was repackaged as "EcoRestore" but includes all of the same requirements set out in 2008 and 2009 Biological Opinions issued by the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries respectively. None of the conservation measures in "EcoRestore" are "new" in any sense.

51. On December 22, 2016, the Delta Tunnels Project Lead Agencies released the Delta Tunnels FEIR/S, an 80,000+ page document. Under the Delta Tunnels Project, up to 9,000 cubic feet per second ("cfs") of water would be transported through the two proposed tunnels to existing export facilities. For perspective on scale, 15,000 cfs is about the entire average summer flow of the Sacramento River near Clarksburg and well in excess of the entire flow during dry periods. This diversion would reduce the

freshwater flows in the Sacramento River and the sloughs of the Delta, and result in massive adverse physical changes to the environment, including water quality and quantity in the Delta, Sacramento River, and area sloughs and including further degradation of critical habitat for imperiled fish, avian and terrestrial species.

52. The Delta Plan Amendments encourage construction and operation of a new water supply project, including an isolated underground conveyance beginning in the northern Delta and traversing through the Delta to transport water south. While the Delta Tunnels are described as an *example* conveyance project, the Amendments were obviously crafted to conform to the already approved Delta Tunnels. The DPA PEIR, however, does not analyze the environmental impacts of the Delta Tunnels, and obscures and ignores this foundational planning decision to develop a new conveyance system that expands the physical potential for export away from the Sacramento River and the Delta. Instead, the DPA PEIR claims that the Delta Tunnels FEIR/S "supports" the conclusions contained within the DPA PEIR (DPA PEIR, p. 3-25), wholly relying on the flawed Delta Tunnels FEIR/S for analysis of environmental impacts of the conveyance project promoted by the CSO Amendments.

53. The Delta Reform Act dictates that the Delta Plan shall "include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan" (Wat. Code, §85308, subd. (b)) and "promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals" (Wat. Code, § 85320). In its Ruling, the Superior Court found that the Delta Plan did not meet these mandates with respect to reducing reliance on the Delta , reducing harm form invasive species (p. 14), providing a natural flow policy (p. 15), increasing water supply reliability (Ruling,, p. 16) and promoting options for conveyance and storage (p. 37). The draft DPA PEIR conspicuously avoided discussing the Ruling or the Writ of Mandate issued to compel these changes to the Delta Plan, despite the fact that the Amendments were plainly

drafted to correct these very flaws. Only now, in the final version, is the Ruling mentioned. (DPA PEIR, p. 3-43.) However, the DPA PEIR still does not acknowledge the obvious relationship of the Amendments to the prior litigation, and that both the CSO Amendments and PM Amendments are attempts to satisfy the ruling.

FIRST CAUSE OF ACTION

(Delta Plan Amendments Are Inconsistent with Delta Reform Act and Other Statutory Authority)

54. Petitioners hereby reallege and incorporate the allegations contained in paragraphs 1 through 53, inclusive, as if fully set forth herein.

55. The Delta Plan Amendments in their entirety, including the text, definitions, Policies and Recommendations are inconsistent with Delta Reform Act and other applicable statutes. As a result, adoption of the Delta Plan exceeded the Council's statutory authority. Without limiting the scope of the Delta Plan Amendment's defects and inconsistencies, Petitioners allege specific examples of the statutory inconsistencies in the paragraphs below, which are organized by Amendment.

Conveyance, Storage Systems and the Operation of Both Amendment

56. According to Delta Protection Act and other area of origin protections, water exported from the Delta is limited to water supplies legally available for export from the Delta. (See Wat. Code, §§ 11460 et seq. and 11128 (Watershed of Origin Statutes – Wat. Code, §§ 1216, 11460 et seq.) and Wat. Code, §§ 10505 et seq. (County of Origin Statutes – Wat. Code, §§ 10505 et seq.), Wat. Code, § § 1215.5, 1216 (Area of Origin Protections applicable to the Delta – Wat. Code, §§ 1215.5, 1216), Wat. Code, §§ 12200 et seq. (Delta Protection Act or "DPA").) Exports by the SWP and CVP must therefore be limited to water which is truly surplus to the present and future needs of the Delta and other areas of origin. The CSO Amendments fail to condition south-of-Delta exports on adequate availability of water and thus violate these areas of origin laws.

57. By promoting the Delta Tunnels Project, the CSO Amendment recommends an increase in conveyance capacity for exports. Increasing conveyance capacity is fundamentally at odds with the coequal goals of the Delta Reform Act. In order to achieve the "flows necessary for recovering the Delta ecosystem and restoring fisheries" (Wat. Code, § 85320) less, not more, conveyance capacity is needed. Improvements to existing conveyance systems that would not result in increased conveyance capacity would be legally consistent with the Delta Reform Act.

58. The Delta Reform Act required the Delta Plan to "promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals." (Wat. Code, § 85304.) The CSO Amendment supporting one specific conveyance project and not considering other viable alternatives violates the Delta Reform Act.

59. Promoting the Delta Tunnels Project directly conflicts with j the Delta Reform Act coequal goals while not adequately advancing any of them.

60. As shown by the Delta Tunnels FEIR/S and the DPA PEIR, completion of the Delta Tunnels Project would cause significant adverse water quality, surface water and water supply impacts in the Delta and therefore interfere with achievement of a reliable water supply for the Delta.

61. The Delta Tunnels Project would result in the loss of thousands of acres of prime farmland in the Delta. Conversion of such a large amount of farmland in the Delta is directly inconsistent with the policy of protecting and enhancing the Delta's agricultural values, as required by Water Code section 85054. Moreover, expected increases in salinity from the Delta Tunnels indicate that while water quality for exporters would improve dramatically, increases in salinity in the Delta would result in significant and unavoidable adverse impacts. Operation of the Delta Tunnels Project would also violate existing water quality standards designed to protect beneficial uses of water by agriculture.

62. Also, as demonstrated by the Delta Tunnels FEIR/S and the DPA PEIR, construction and operation of the Delta Tunnels would result in numerous adverse biological impacts. The immeasurable harmful impacts to protected aquatic and terrestrial species indicate that the Delta Tunnels would be detrimental to "protecting, restoring, and enhancing the Delta ecosystem." (Wat. Code, § 85054.)

63. In the CSO Amendments, the Council has fundamentally failed to ensure that the Delta Tunnels actually further the coequal goals. WR R12 is a recommendation, and therefore nonbinding. As the Council admits, covered projects are required to "demonstrate consistency only with Delta Plan policies, which are adopted as regulations." (DPA PEIR, p. 3-231.) Thus, while the Delta Plan and the Amendments promote the Delta Tunnels, the Council fails to use any of its authority to ensure the project is consistent with the coequal goals. This is inconsistent with the Council's role regarding conveyance as set forth in Water Code sections 85304 and 85320, subdivision (e). While the Council appears to have considered the substantial impacts of the Delta Tunnel Project, the Council fails to do anything to address them. Without direction from the Council, the Delta Tunnels will not meet, and in fact will violate, the coequal goals.

64. By unequivocally promoting the Delta Tunnels Project, without also ensuring that the project would further the coequal goals, the CSO Amendments violate the Delta Reform Act.

Delta Levees investment and Risk Reduction Strategy Amendment

65. The DLIS Amendment violates the Delta Reform Act by increasing the risk of flooding in the Delta and failing to protect cultural, recreational, natural resource and agricultural values of the Delta.

66. The RR P1 priority funding system could leave much of the Delta without levee systems that meet adequate minimum engineering standards and consign residents and property to an unacceptable increased risk of flooding. By restricting the use of otherwise available funds, the DLIS Amendment adds an unnecessary hurdle to levee

maintenance that needlessly endangers those that rely on the levee system, including agriculture, cultural and recreation resources. Creating this risk violates the coequal goals of protecting and enhancing Delta resources, and thus the DLIS Amendment violates the Delta Reform Act.

67. The DLIS Amendment favors the use of levee setbacks as a tool for flood management and ecosystem conservation. (DPA PEIR, Appen. A, p. 35.) This reliance is misguided and not adequately analyzed. Levee setbacks can increase the risk of levee instability while unnecessarily increasing maintenance costs and draining limited available funds. Moreover, levee setbacks can actually cause harm to terrestrial and aquatic species. These outcomes are in direct conflict with the coequal goals and the Delta Reform Act.

Performance Measures Amendments

68. The PM Amendments are insufficient to meet the coequal goals of the Delta Reform Act; specifically, the performance measures would not effectively reduce reliance on the Delta, adequately restore natural flows, actually protect the Delta as a place, or increase water supply reliability.

69. Performance measure Strategy 3.3, ostensibly intended to reduce reliance on the Delta, only calls for significant decreases in exports in critically dry years while actually calling for increased exports in wet years. (DPA PEIR, App. A, p. 242.) Increasing exports is antithetical to the goal of reducing reliance on the Delta. Moreover, limiting reductions in exports to critically dry years is not a sufficiently substantial change to reduce overall reliance.

70. Strategy 3.3 also violates the DPA, because it does not ensure adequate water supply for in-Delta beneficial uses.

71. Performance measure Strategy 4.1, ostensibly meant to restore natural flows, is both unenforceable and insufficient. Compliance is not required until 2030, and Strategy 4.1 is subject to changes pursuant to the State Water Resources Control Board

updating the Bay-Delta Water Quality Control Plan. (DPA PEIR, App. A, p. 248-49.) The lack of clarity in Strategy 4.1 inhibits its effectiveness at returning natural water flows as required under the Delta Reform Act. (Wat. Code, § 85302, subd. (c)(5).)

[SECOND CAUSE OF ACTION]

(The Delta Plan Amendments PEIR Does Not Comply with CEQA)

72. Petitioners hereby incorporate by reference each and every allegation set forth above, paragraphs 1 through 71 inclusive.

73. The Council committed a prejudicial abuse of discretion and failed to proceed in a manner required by law by relying on a PEIR that fails to meet the requirements of CEQA for disclosure, analysis, mitigation of significant project impacts and/or consideration of project alternatives.

74. The Council failed to integrate the DPA PEIR CEQA review with related environmental review and consultation requirements. Project descriptions must include "a list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies." (CEQA Guidelines, §15124, subd. (d)(1)(C).) The lead agency should integrate its CEQA review with these related requirements. (*Ibid.*) To this end, lead agencies should discuss how other agencies are expected to exercise their permitting authority over sensitive natural resources that could be impacted by the proposed project. (See *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 939 (*Banning Ranch*).) Here, the DPA PEIR failed to meet these integration and consultation requirements.

75. The DPA PEIR should "discuss [other agency actions] and their ramifications for mitigation measures and alternatives" because "there is credible evidence that [other agency actions] might be present" in the project area. (*Banning Ranch, supra,* 2 Cal.5th at 938.) The Amendments promote the Delta Tunnels Project, which involves numerous pending permitting decisions by other agencies. With respect to aquatic and terrestrial biological resources, the DPA PEIR does not reflect meaningful

consultation with the United States Army Corps of Engineers' authorization of a Clean Water Act Section 404 permit, the State Water Resources Control Board's granting of a Change in Point of Diversion, or the State Water Resources Control Board's Section 401 Water Quality Certification, which all involve consideration of biological resource impacts. The DPA PEIR also fails to disclose that the Delta Tunnels Project will permit the take of special-status species. The DPA PEIR fails to acknowledge that the Delta Tunnels FEIR has been certified, and the Delta Tunnels approved by DWR; instead, the DPA PEIR continually uses conditional language to refer to a project that already has a final environmental impact report and was approved by its lead agency. (See DPA PEIR, p. 3-25 ["regardless of the final configuration of the California WaterFix project *if and when it is* approved"] [emphasis added].)

76. The failure to adequately integrate or consult future permitting decisions of other agencies deprives the public of a "full understanding of the environmental issues raised" by the Amendments. (*Banning Ranch, supra,* 2 Cal.5th at 942.)

77. The DPA PEIR fails to provide an accurate, stable, and finite description of the project as required by CEQA, which is essential to an informative and legally sufficient EIR. Examples of deficiencies of the DPA PEIR's project description, include, but are not limited to:

(a) The project description fails to describe the Policies and Recommendations contained within the Delta Plan Amendments;

(b) The DPA PEIR includes conflicting information about whether the project would even result in any environmental impacts. For instance, the PEIR claims that "the Proposed Project does not involve construction or operation of specific facilities[.]" (DPA PEIR, p. 3-22.) At the same time, the DPA PEIR claims that the Proposed Project "evaluates the potential impacts of types of

projects that the Delta Plan . . . would encourage and promote." (Draft DPA PEIR, p. 4-1.)

(c) The DPA PEIR was also misleading in describing the relationship of the Delta Plan Amendments to the Delta Tunnels Project. The failure to accurately disclose the relationship between the Amendments and the Delta Tunnels Project prevents meaningful analysis of the environmental impacts of implementing the Amendments.

(e) The DPA PEIR fails to describe a consistent and accurate environmental "baseline" for analysis of the project's environmental impacts that contributed to the DPA PEIR's flawed analysis of environmental impacts. (CEQA Guidelines, § 15125.)

(f) The DPA PEIR does not use the "best available science" as defined by the Council's own regulations (23 Cal. Code Regs. § 5001, subd. (k)) when examining the baseline and current conditions in the Delta.

78. The DPA PEIR fails to adequately disclose or analyze the project's impacts on the environment, including, but not limited to: impacts on water quality, waters supply, hydrology, agricultural resources, biological resources, land use, recreation, public services, air quality, aesthetics, greenhouse gas/climate change, public trust resources, and cumulative impacts. (Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.)

79. The DPA PEIR fails to adequately disclose or analyze the potential impacts of the Delta Tunnels Project. Such analysis is necessary because the construction and operation of the Delta Tunnels Project is a reasonably foreseeable consequence of the Amendments. The DPA PEIR impermissibly relies on the Delta Tunnels FEIR/S and does not engage in any analysis of its own regarding the likely

impacts of the Delta Tunnels. "Readers of an EIR should not be required to 'ferret out an unreferenced discussion in [related material] . . . The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public . . . who may not be previously familiar with the details of the project." (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 941.)

80. The DPA PEIR fails to adopt feasible mitigation measures and alternatives to reduce or avoid significant impacts, in direct contravention of CEQA's substantive mandate that all feasible mitigation measures and alternatives be adopted to avoid or reduce a project's significant and potentially significant impacts. (CEQA Guidelines, §§ 15126.6, 15126.4.) Moreover, the adopted mitigation measures fail to meet basic legal requirements of enforceability. The mitigation measures included in the DPA PEIR are recycled mitigation measures from the 2013 Delta Plan, the adequacy of which has not yet been adjudicated; none of the mitigation measures were created specifically for the Amendments.

81. By promoting increased diversions from the Delta, the DPA PEIR and Amendments directly violate the Delta Reform Act's mandate to reduce exporters' reliance on Delta water supplies.

82. The DPA PEIR improperly segments and piecemeals evaluation of the environmental impacts of the project and fails to evaluate the impact on the environment of all phases of the project, which include "planning, acquisition, development, and operation."

83. The DPA PEIR fails to include a reasonable range of alternatives and to provide adequate detail of the alternatives to allow the public to assess their ability to meet project objectives as well as their respective environmental impacts. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.6, 15002.) The Council did not appropriately consider a range of reasonable alternatives that would further the coequal goals of the Delta Reform Act. The DPA PEIR discussion of alternatives sweepingly

dismisses viable alternatives so that the Amendments can promote the Delta Tunnels Project.

84. The DPA PEIR fails to adequately respond to comments submitted by the public and governmental agencies during public review of the DPA PEIR. The DPA PEIR responses to comments consist of conclusory statements unsupported by factual information and misrepresentations of commenters' points. For example, Petitioners' commented that the draft DPA PEIR failed to explain how the Delta Tunnels Project would further the coequal goal of ecosystem restoration, and that *construction* of such a conveyance project would cause considerable ecological damage. (See DPA PEIR, Comment Letter LO10, Comment LO10-3.) The response was that achieving the coequal goals "requires a balance of interests and tradeoffs" and refers to non-binding recommendations for the *operation* of a conveyance system. (DPA PEIR, p. 3-229.) This response purposefully avoided addressing Petitioners' core contentions and is inadequate under CEQA.

85. The DPA PEIR similarly fails to adequately respond to Petitioners' comments regarding the efficacy of upper watershed conservation to promote the coequal goals. (See DPA PEIR, Comment Letter LO10, Comment LO10-6.) The DPA PEIR response fails to explain why such an alternative was not included in the proposed amendments, or even attempt to refute the comment's premise. This patent failure to respond in good faith constitutes a failure to respond.

86. The DPA PEIR fails to respond to legitimate concerns regarding the continued reliance on the 2013 Delta Plan mitigation measures. (See DPA PEIR, p. 3-233 [response to Comment LO10-14].) This response does not once address this issue with the DPA PEIR mitigation measures.

87. Additionally, City of Stockton commented that the DPA PEIR failed to disclose reasonably foreseeable impacts of the CSO Amendments, specifically the impacts of the promoted Delta Tunnels Project. (See DPA PEIR, Comment Letter

LO11, Comment LO11-1.) Such undisclosed impacts include degrading Stockton's water supply, and the City of Stockton provided numerous evidentiary sources supporting these impacts. (*Ibid.*) Yet the response was inaccurate, misleadingly stating that the DPA PEIR "analyzes potential impacts to water supply and water quality (and associated mitigation) that could occur as a result of implementing the Proposed Project" and "determines that both of these impacts are potentially significant." (DPA PEIR, p. 3-251.) This response is factually incorrect. The DPA PEIR did not find salinity impacts to be potentially significant, instead dismissing them based on findings of the Delta Tunnels FEIR/S pertaining to a different location in the Delta, rendering the conclusions inapplicable to Stockton. The DPA PEIR response demonstrated a complete disregard for the evidence provided by the City of Stockton, despite the direct relevance to impact determinations.

88. These responses and others violate CEQA for failing to include "good faith, reasoned analysis" and for being "conclusory statements unsupported by factual information[.]" (CEQA Guidelines, § 15088, subd. (c).)

89. The DPA PEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. Pursuant to CEQA Guidelines section 15088.5, subdivision (a)(4), preparation and recirculation of a new Draft DPA PEIR is therefore required.

90. The Council failed to adopt adequate findings, supported by substantial evidence, that alternatives to the Proposed Project and proposed mitigation measures and alternatives that would have avoided or lessened the significant impacts of the project were infeasible, and the Council also failed to disclose the readily available mitigation measures and alternatives that would meet the basic project objectives. (CEQA Guidelines, § 15091.)

91. The Council failed to properly determine that economic, legal, social, technological, or other benefits of the program were overriding considerations that

permitted approval of the Amendments despite significant and unavoidable impacts on the environment. (CEQA Guidelines, § 15091.)

The PEIR Failed to Analyze the Delta Tunnels as Part of the Project or as a Cumulative Project

92. The Delta Plan plainly supports the construction and operation of the Delta Tunnels Project. (DPA PEIR, Appen. A, p. 209.) Thus, the construction and operation of the Delta Tunnels Project is a reasonably foreseeable consequence of the Amendments. In fact, the Amendments amounts to no more than a post hoc rationalization for the dangerous conveyance project. The Delta Tunnels Project will have many significant environmental effects and must be considered as a cumulative project. (CEQA Guidelines, § 15130, subd. (b) (referring to "probable future projects").)

93. The Council claims that it "does not propose or contemplate directly authorizing construction or operation of any physical activities. Rather . . . [it] seeks to influence the actions activities and/or projects of other public agencies." (DPA PEIR, p. 3-23.) The Council will not engage in adequate environmental analysis of such projects because "the specific locations, scale, and timing of future facilities are not known at this time." (DPA PEIR, p. 3-24.) This does not apply to the Delta Tunnels Project and the 80,000+ page Delta Tunnels FEIR/S. The Council's last excuse as to why independent analysis of the Delta Tunnels is not needed also fails. The Council claims that the Delta Tunnels FEIR/S "support[s] the conclusions" in the DPA PEIR. (DPA PEIR, p. 3-25.) This reliance ignores the reality that the Delta Tunnels FEIR/S itself is flawed and currently subject to substantial litigation.

94. Having claimed that the Delta Tunnels Project is a cumulative project, the Council must evaluate cumulative impacts, including those caused by the cumulative project. Including neither a project-level discussion nor an adequate cumulative discussion of the Delta Tunnels Project in the DPA PEIR was not a viable approach. (CEQA Guidelines, § 15130.)

95. As a result of the foregoing defects, the Council prejudicially abused its discretion by certifying the DPA PEIR that does not comply with CEQA and by approving the Amendments in reliance thereon. Accordingly, the Council's certification of the DPA PEIR and approval of the Delta Plan and Regulations must be set aside.

THIRD CAUSE OF ACTION

(Declaratory Relief)

96. Petitioners hereby incorporate by reference each and every allegation set forth above, paragraphs 1 through 95 inclusive.

97. An actual controversy has arisen and now exists between the Petitioners and the Council. As described above, Petitioners contend that the Amendments fail to comply with the Delta Reform Act and other applicable law, including but not limited to the California Constitution, the Public Trust Doctrine, and area of origin, watershed of origin, county of origin, Delta Protection Act, and other water rights protections.

98. Petitioners therefore seek a judicial determination of respective rights and duties with respect to the Council compliance with the Delta Reform Act and other applicable laws.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. For alternative and peremptory writs of mandate, commanding the Council to:

(a) Vacate and set aside approval of the Delta Plan Amendments;

(b) Vacate and set aside certification of the Delta Plan Amendments PEIR;

(c) Prepare a legally adequate PEIR for the Project; and

(d) Suspend any and all activity pursuant to the Council's approval of the Delta Plan Amendments that could result in an adverse change

or alteration to the physical environment until the Council has complied with all requirements of CEQA and all other applicable state and local laws, policies, ordinances, and regulations as are directed by this Court.

2. For a stay, temporary restraining order, preliminary injunction, and permanent injunction prohibiting any actions by the Council pursuant to the Council's approval of the Delta Plan Amendments and certification of the Delta Plan Amendments PEIR until the Council has fully complied with all requirements of the Delta Reform Act, CEQA and all other applicable state laws, policies, and regulations;

3. For a declaration that the Council's actions approving the Delta Plan Amendments are inconsistent with the Delta Reform Act and other applicable laws and that the approvals are therefore invalid and have no force and effect;

4. For costs of the suit;

5. For attorneys' fees pursuant to the Code of Civil Procedure section 1021.5; and

6. For such other and further relief as the Court deems just and proper.

Dated: May _28, 2018

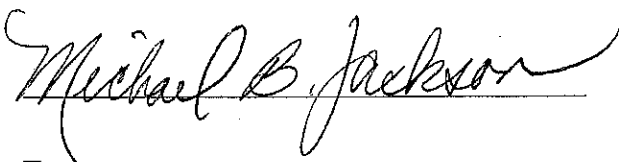
By: Michael B. Jackson

VERIFICATION

I am an attorney at law duly admitted and licensed to practice before all courts of this State and I have my professional office at 20 Crescent St, Quincy, Plumas County, California. I am the attorney of record for Petitioners in the above-entitled action, and am authorized to execute this verification on their behalf. I have read the foregoing petition and complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

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

Executed at Quincy, California on May 28, 2018_____.



Michael B. Jackson