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NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU TRIBE,
7 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE,
INSTITUTE FOR FISHERIES RESOURCES, PACIFIC COAST
8 FEDERATION OF FISHERMEN’S ASSOCIATIONS, and SAN FRANCISCO
CRAB BOAT OWNERS ASSOCIATION

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO

11 WESTLANDS WATER DISTRICT, a California) CASE NO. 19 CECG03887
12 Water District,)
13 Plaintiff,) **VERIFIED ANSWER OF DEFENDANTS**
14 v.) **NORTH COAST RIVERS ALLIANCE,**
15 ALL PERSONS INTERESTED IN THE MATTER) **WINNEMEM WINTU TRIBE,**
OF THE CONTRACT BETWEEN THE UNITED) **CALIFORNIA SPORTFISHING**
16 STATES AND WESTLANDS WATER DISTRICT) **PROTECTION ALLIANCE, INSTITUTE**
PROVIDING FOR PROJECT WATER SERVICE,) **FOR FISHERIES RESOURCES,**
17 SAN LUIS UNIT AND DELTA DIVISION AND) **PACIFIC COAST FEDERATION OF**
FACILITIES REPAYMENT) **FISHERMEN’S ASSOCIATIONS, and**
18) **SAN FRANCISCO CRAB BOAT**
) **OWNERS ASSOCIATION TO**
) **COMPLAINT FOR VALIDATION**

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20
21 Defendants NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU TRIBE,
22 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, INSTITUTE FOR FISHERIES
23 RESOURCES, PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS, and SAN
24 FRANCISCO CRAB BOAT OWNERS ASSOCIATION (“defendants”) hereby answer the Complaint for
25 Validation filed by the WESTLANDS WATER DISTRICT (“WWD”) as follows:

- 26 1. Paragraph 1 consists of WWD’s description of its case, to which no response is required.
27 To the extent a response is required, defendants deny each and every allegation therein.
28 2. Paragraph 2 further describes the nature of WWD’s case, to which no response is needed.

1 To the extent a response is required, defendants deny each and every allegation therein.

2 3. Paragraph 3 consists of a legal conclusion, to which no response is required. To the extent
3 a response is required, defendants deny each and every allegation of paragraph 3.

4 4. Defendants admit the allegations of paragraph 4.

5 5. Defendants lack information and belief sufficient to answer the allegations in paragraph 5,
6 and on that basis deny each and every allegation therein.

7 6. Defendants admit the allegations of paragraph 6.

8 7. Paragraph 7 consists of legal conclusions to which no response is required. To the extent a
9 response is required, defendants deny each and every allegation therein.

10 8. Defendants admit the allegations of paragraph 8.

11 9. Defendants lack information and belief sufficient to answer the allegations in paragraph 9,
12 and on that basis deny each and every allegation therein.

13 10. Defendants lack information and belief sufficient to answer the allegations in paragraph
14 10, and on that basis deny each and every allegation therein.

15 11. Defendants lack information and belief sufficient to answer the allegations in paragraph
16 11, and on that basis deny each and every allegation therein.

17 12. Defendants lack information and belief sufficient to answer the allegations in paragraph
18 12, and on that basis deny each and every allegation therein.

19 13. Paragraph 13 purports to quote from Public Law 114-322. The words of this Public Law
20 speak for themselves and require no response.

21 14. Defendants lack information and belief sufficient to answer the allegations of paragraph
22 14, and on that basis deny each and every allegation therein.

23 15. Defendants lack information and belief sufficient to answer the allegations of paragraph
24 15, and on that basis deny each and every allegation therein.

25 16. Paragraph 16 consists of characterizations of the Converted Contract’s terms. Those terms
26 speak for themselves, and therefore no response is required. To the extent a response to paragraph 16 is
27 nonetheless required, defendants deny each and every allegation therein.

28 17. Paragraph 17 characterizes WWD’s interpretation and characterization of the terms of the

1 Converted Contract, and the basis for WWD’s acceptance of them. Those terms speak for themselves,
2 and therefore no response is required. To the extent a response to paragraph 17 is nonetheless required,
3 defendants deny each and every allegation thereof.

4 18. In response to paragraph 18, defendants deny that WWD’s October 15, 2019 Board of
5 Directors’ meeting was properly noticed, and that WWD provided interested parties with an adequate
6 opportunity to review and comment upon the Board’s proposed Resolution and Converted Contract.
7 None of the Exhibits to the Contract were provided to the public, preventing informed public review and
8 comment. Accordingly, defendants deny each and every allegation of this paragraph.

9 19. In response to paragraph 19, defendants state that the Board’s Resolution did not lawfully
10 authorize the actions allegedly taken by the Board, and therefore defendants deny each and every
11 allegation of this paragraph.

12 20. Paragraph 20 incorporates by reference the other paragraphs of the Complaint, and
13 therefore no response is required. To the extent a response is required, defendants deny each and every
14 allegation of paragraph 20.

15 21. Defendants lack information and belief sufficient to answer the allegations of paragraph
16 21, and on that basis deny each and every allegation therein.

17 22. Paragraph 22 consists of legal conclusions to which no response is required. To the extent
18 a response is required, defendants deny each and every allegation therein.

19 23. Paragraph 23 seeks a decree from this Court. Defendants deny that WWD is entitled to
20 the requested decree, and on that basis, defendants deny each and every allegation of paragraph 23.

21 24. In response to paragraphs 20 through 23, Defendants deny that WWD is entitled to any of
22 the relief requested or any relief at all.

23 25. Except as otherwise admitted or denied herein, defendants deny each and every allegation
24 contained in paragraphs 1 through 23, and the claims made in support of paragraphs 1-7 of the
25 Complaint’s prayer for relief, or any of them.

26 **AFFIRMATIVE FACTUAL ALLEGATIONS**

27 26. Defendant NORTH COAST RIVERS ALLIANCE (“NCRA”) is a non-profit
28 unincorporated association with members throughout Northern California. NCRA was formed for the

1 purpose of protecting California’s rivers and their watersheds from the adverse effects of excessive water
2 diversions, ill-planned urban development, harmful resource extraction, pollution, and other forms of
3 degradation. Its members use and enjoy California’s rivers including the Sacramento River, the San
4 Joaquin River, their Delta (“the Delta”) and their watersheds for recreational, aesthetic, scientific study,
5 and related non-consumptive uses. The interests of NCRA and its members will harmed by the continued
6 reduction in and pollution of the freshwater flows in the Delta, degradation of its water quality, and loss
7 of its fish and wildlife species that validation of the Converted Contract would cause.

8 27. Defendant WINNEMEM WINTU TRIBE is a Native American Tribe recognized by the
9 State of California whose aboriginal territory encompasses the upper watersheds of the Sacramento River
10 including the McCloud River. The Winnemem Wintu Tribe was traditionally dependent on salmon
11 fishing for both subsistence and cultural purposes, and maintains a deep cultural, spiritual and
12 recreational interest in the continued viability of California’s salmon runs that pass through the Delta.
13 The Converted Contract assumes and depends upon continued inundation of the McCloud River by
14 Shasta Reservoir and the blocking of McCloud River salmon runs by Shasta Dam. WWD has ignored the
15 Winnemem Wintu’s vital historic and cultural interest in restoration of the historic salmon runs that the
16 Converted Contract will preclude. The Winnemem Wintu Tribe is a strong proponent of Delta
17 restoration, including construction of fishways around Shasta Dam to restore historic McCloud River
18 salmon runs through the Delta. The Winnemem Wintu Tribe will be harmed by the continued reduction
19 in and pollution of the fresh water flows in the Delta, degradation of its water quality, and loss of its fish
20 and wildlife species that validation of the Converted Contract would cause.

21 28. Defendant CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”) is a
22 nonprofit, public benefit corporation organized under the law of the State of California. The purposes of
23 the organization include promoting the conservation, restoration and enhancement of the State’s fishery
24 resources and the aquatic and terrestrial habitats on which these resources depend. CSPA has
25 approximately 2,000 members who use the Delta and its upstream waters, including the San Joaquin
26 River and its tributaries for recreational, scientific, educational and conservation purposes, including
27 fishing, boating, kayaking, sailing, wildlife observation, photography, hiking, and aesthetic enjoyment on
28 a continuing and ongoing basis. CSPA and its members will be harmed by the continued reduction in and

1 pollution of the freshwater flows in the Delta, degradation of its water quality, and loss of its fish and
2 wildlife species that validation of the Converted Contract would cause.

3 29. Defendant INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a non-profit, tax-
4 exempt organization that works to protect and restore Pacific salmon and other fish populations and the
5 human economies that depend on them. IFR maintains its principal place of business in San Francisco,
6 California. IFR both funds and manages many fish habitat protection programs and initiatives. In that
7 capacity, IFR advocates for reforms to protect fish health and habitat throughout the West Coast of the
8 United States and has successfully advocated for dam removals, improved pesticide controls, better
9 forestry stream protection standards, and enhanced marine and watershed conservation regulations
10 throughout the West Coast. IFR has worked tirelessly for years to restore and enhance the Delta and its
11 beleaguered fish and wildlife. IFR and its members will be harmed by the continued reduction in and
12 pollution of freshwater flows in the Delta, degradation of its water quality, and loss of its fish and wildlife
13 species that validation of the Converted Contract would cause.

14 30. Defendant PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS
15 (“Pacific Coast Fishermen”) is a nonprofit membership organization incorporated in 1976 with
16 headquarters located in San Francisco, California. Pacific Coast Fishermen is composed of more than 14
17 separate commercial fishing and vessel owners’ associations situated along the West Coast of the United
18 States. By virtue of its combined membership of approximately 750 fishermen and women, Pacific Coast
19 Fishermen is the single largest commercial fishing organization on the West Coast. Pacific Coast
20 Fishermen represents the majority of California’s organized commercial salmon fishermen and has been a
21 tireless advocate for the protection of Pacific salmon and their spawning, rearing and migratory habitat
22 for more than 30 years. Pacific Coast Fishermen and its members would be harmed by the continued
23 reduction in and pollution of freshwater flows in the Delta, degradation of its water quality, and loss of its
24 fish and wildlife species that validation of the Converted Contract would cause.

25 31. Defendant SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION (“San Francisco
26 Fishermen”) is a century-old association of owners and operators of small, family-owned fishing boats
27 that catch Dungeness crab, wild California King salmon, Pacific herring, and other species that live in and
28 depend upon the cold waters of the Pacific Ocean, the San Francisco Bay-Delta, the Sacramento and San

1 Joaquin Rivers and their tributaries. San Francisco Fishermen is also actively involved in community
2 education and advocacy concerning fisheries resources legislation to ensure that the rich heritage of
3 commercial fishing in the Bay Area will survive for future generations. San Francisco Fishermen and its
4 members will be harmed by the continued reduction in and pollution of freshwater flows in the Delta,
5 degradation of its water quality, and loss of its fish and wildlife species that validation of the Converted
6 Contract would cause.

7 **FIRST AFFIRMATIVE DEFENSE**

8 Whether WWD’s validation of the Converted Contract complies with the Water Code and
9 Government Code as WWD alleges has already been placed in issue by defendants’ denial of the
10 allegations of the Complaint, above.

11 **SECOND AFFIRMATIVE DEFENSE**

12 WWD’s approval of Resolution No. 119-19 and the Converted Contract violates the Ralph M.
13 Brown Act, Government Code section 54950, *et seq.*, in that, *inter alia*, WWD failed to provide adequate
14 public notice of this Resolution and the Converted Contract before purporting to approve the same
15 because WWD failed to make publicly available the Exhibits to this Resolution and the Converted
16 Contract whose contents are essential to public understanding of the substance and impact of said
17 Resolution and Converted Contract.

18 **THIRD AFFIRMATIVE DEFENSE**

19 WWD’s approval of Resolution No. 119-19 and the Converted Contract violates the Water Code,
20 section 1700 *et seq.*, in that, *inter alia*, approval of the California State Water Resources Control Board is
21 required before WWD may change the purpose and duration of use, place of use or point of diversion of
22 the waters that are the subject of said Resolution and Converted Contract, and such approval has not been
23 given.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 WWD’s approval of Resolution No. 119-19 and the Converted Contract violates the Sacramento-
26 San Joaquin Delta Reform Act of 2009, Water Code section 85000 *et seq.*, in that, *inter alia*, said
27 Resolution and Converted Contract constitute a “covered action” within the meaning of Water Code
28 section 85057.5, and thus require WWD’s adoption of a valid certification of consistency with the Delta

1 Plan adopted by the Delta Stewardship Council, but no such required consistency certification has been
2 adopted.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 WWD’s approval of Resolution No. 119-19 and the Converted Contract violate the Public Trust
5 Doctrine in that, *inter alia*, WWD’s diversion of waters from the Delta unreasonably harms the public
6 trust resources and uses of the Delta and its tributary rivers, and WWD’s diversions of water pursuant to
7 said Resolution and Contract do not constitute a public trust use.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 WWD’s approval of Resolution No. 119-19 and the Converted Contract violates the California
10 Environmental Quality Act (“CEQA”), Public Resources Code section 21000, in that, *inter alia*, WWD
11 improperly found these approvals to be exempt from CEQA’s requirement for preparation of an
12 Environmental Impact Report (“EIR”), and consequently, WWD failed to prepare and certify the EIR that
13 CEQA requires be adopted before WWD may lawfully approve said Resolution and Converted Contract.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 WWD’s approval of Resolution No. 119-19 and the Converted Contract violates the Clean Water
16 Act, 33 U.S.C. section 1251 *et seq.*, because neither WWD nor its putative contracting party, the United
17 States Bureau of Reclamation, has secured the National Pollutant Discharge Elimination System
18 (“NPDES”) permit that is required under 33 U.S.C. sections 1311 and 1342 for the discharge of
19 pollutants to waters of the United States, including Mud Slough, the San Joaquin River, and the Delta that
20 would result from WWD’s irrigation of lands that WWD intends to irrigate with the water that is to be
21 delivered pursuant to said Resolution and Converted Contract.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 WWD’s approval of Resolution No. 119-19 and the Converted Contract is void because WWD’s
24 putative contracting partner, the United States Bureau of Reclamation, lacks authority to enter into the
25 Converted Contract that is the subject of WWD’s Complaint without first complying with the National
26 Environmental Policy Act (“NEPA”), 42 U.S.C. section 4321 *et seq.*, and it has not done so.

27 **RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES**

28 All affirmative defenses that may be applicable to the Complaint cannot be fully anticipated.

1 Accordingly, defendants reserve the right to assert additional applicable affirmative defenses to the extent
2 permitted by law.

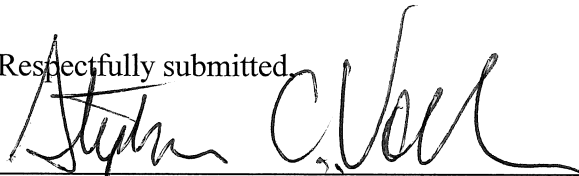
3 **PRAYER FOR RELIEF**

4 WHEREFORE, defendants NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU
5 TRIBE, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, INSTITUTE FOR FISHERIES
6 RESOURCES, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, and SAN
7 FRANCISCO CRAB BOAT OWNERS ASSOCIATION pray that:

- 8 1. WWD's request for a judgment validating its approval of Resolution No. 119-19 and the
9 Converted Contract with the United States be denied;
- 10 2. WWD take nothing by its Complaint for Validation;
- 11 3. Judgment be entered in favor of defendants;
- 12 4. Judgment be entered invalidating WWD's actions purporting to approve its Resolution
13 No. 119-19 and the Converted Contract with the United States;
- 14 5. Defendants be awarded their costs of suit incurred herein;
- 15 6. Defendants be awarded their attorney fees incurred herein; and
- 16 7. Defendants be awarded such other and further relief as the Court deems just and proper.

17
18 Dated: December 16, 2019

Respectfully submitted,




19
20 STEPHAN C. VOLKER
Attorneys for Defendants
21 NORTH COAST RIVERS ALLIANCE, WINNEMEM WINTU
22 TRIBE, CALIFORNIA SPORTFISHING PROTECTION
23 ALLIANCE, INSTITUTE FOR FISHERIES RESOURCES,
24 PACIFIC COAST FEDERATION OF FISHERMEN'S
25 ASSOCIATIONS, and SAN FRANCISCO CRAB BOAT
26 OWNERS ASSOCIATION
27
28

VERIFICATION

1
2 I, Stephan C. Volker, am the attorney for defendants in this action. I make this verification on
3 behalf of the defendants because such parties and their representatives are absent from the county in
4 which my office is located. I have read the foregoing Verified Answer of Defendants North Coast Rivers
5 Alliance, Winnemem Wintu Tribe, California Sportfishing Protection Alliance, Institute for Fisheries
6 Resources, Pacific Coast Federation of Fishermen’s Associations, and San Francisco Crab Boat Owners
7 Association to Complaint for Validation and know its contents. The facts therein alleged are true and
8 correct to the best of my knowledge and belief.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct, and that this Verification was executed in Berkeley, California on December 16, 2019.

11
12 
13 STEPHAN C. VOLKER

1 **PROOF OF SERVICE**

2 On December 16, 2019, I served a true copy of the following document:

3 **VERIFIED ANSWER OF DEFENDANTS NORTH COAST RIVERS ALLIANCE, WINNEMEM**
4 **WINTU TRIBE, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, INSTITUTE**
5 **FOR FISHERIES RESOURCES, PACIFIC COAST FEDERATION OF FISHERMEN'S**
6 **ASSOCIATIONS, and SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION TO**
7 **COMPLAINT FOR VALIDATION**

8 in the above-captioned matter on the persons listed below by placing true copies of said document in
9 prepaid envelopes in the United States mail at Berkeley, California, addressed as follows:

10 Daniel J. O'Hanlon
11 William T. Chisum
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24 Jon D. Rubin
25 General Counsel, Westlands Water District
26 400 Capitol Mall, 28th Floor
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28 jrubin@wwd.ca.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 16, 2019 at Berkeley, California.


Yuri Miyagawa