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18 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
19 **EASTERN DISTRICT OF CALIFORNIA**

20 AQUALLIANCE; CALIFORNIA  
SPORTFISHING PROTECTION ALLIANCE;  
21 CALIFORNIA WATER IMPACT  
NETWORK; CENTRAL DELTA WATER  
22 AGENCY; SOUTH DELTA WATER  
AGENCY,

23 Petitioners and Plaintiffs,  
24 v.

25 THE UNITED STATES BUREAU OF  
RECLAMATION; SAN LUIS & DELTA-  
26 MENDOTA WATER AUTHORITY; U.S.  
DEPARTMENT OF THE INTERIOR; DAVID  
27 BERNHARDT, in his official capacity; and  
DOES 1 – 100,

28 Respondents and Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF; PETITION FOR WRIT  
OF MANDATE

(National Environmental Policy Act, 42 U.S.C.  
§ 4321 *et seq.*; Administrative Procedure Act, 5  
U.S.C. §§ 701 *et seq.*; California Environmental  
Quality Act, Cal. Pub. Resources Code §§  
21167, 21168, 21168.5; Cal. Code Civ. Proc. §§  
1060, 1085, 1088.5, 1094.5)

1 Petitioners and Plaintiffs AquAlliance, California Sportfishing Protection Alliance,  
2 California Water Impact Network, Central Delta Water Agency and South Delta Water Agency  
3 (collectively, “Plaintiffs” or “Petitioners”) hereby allege as follows:

4 **I. INTRODUCTION**

5 1. This is a civil suit brought pursuant to the National Environmental Policy Act  
6 (“NEPA”), 42 U.S.C. §§ 4321 et seq., the Administrative Procedure Act (“APA”), 5 U.S.C. §§  
7 701 et seq., and the California Environmental Quality Act (“CEQA”), Public Resources Code §§  
8 21000 et seq..

9 2. This action is brought by several California water resource management and  
10 conservation organizations to challenge defendants’ environmental review and approval of a  
11 2019-2024 5water transfer program to move water from sellers located upstream of the  
12 Sacramento/San Joaquin Delta (“Delta”) to willing buyers south of the Delta (the “Project”).  
13 These water transfers would drain both surface and groundwater resources from the Sacramento  
14 River and San Joaquin River watersheds, imposing significant and irreversible threats to the  
15 people and sensitive species that rely on these water resources and associated aquatic and riparian  
16 habitats.

17 3. The Project will likely have devastating impacts to the Delta. The Delta faces  
18 interrelated problems of inadequate water supplies, instream flow deficits, water quality  
19 impairments, and degraded aquatic habitats. This Project would worsen those existing problems  
20 by further reducing freshwater flows into the Delta.

21 4. The Project would also have detrimental effects on groundwater by relying in part  
22 on “groundwater substitution” for these transfers with an inaccurate characterization of existing  
23 conditions, and wholly ineffective mitigation measures. These adverse groundwater effects will, in  
24 turn, adversely affect connected surface water and habitats.

25 5. This action arises following the District Court’s judgment in 2018 vacating and  
26 setting aside a similar but distinct 10-year water transfer program and associated environmental  
27 documents originally approved in 2015. Following the District Court’s vacatur, USBR and  
28 SLDMWA assessed the Project in a Revised Environmental Impact Statement/Environmental

1 Impact Report (“EIS/EIR”) prepared for both NEPA and CEQA purposes. However, the EIS/EIR  
2 only attempts to minimally rectify past adjudicated mistakes, rather than informing the public of  
3 the Project’s real impacts. USBR and SLDMWA have failed to provide an accurate description of  
4 the Project, made nakedly unenforceable promises about operation of the Project, failed to account  
5 for a plethora of new information and changed circumstances that have come about since  
6 environmental review for the ten-year transfer program was evaluated, and doubled down prior  
7 analytical deficiencies.

8 6. Simply put, it is not 2015, and much has changed since then. The current proposed  
9 Project is markedly different than the one originally contemplated over five years ago, having  
10 been significantly changed in scope. California and the Project area are not as they were when  
11 environmental analysis for the original project was conducted, yet the EIS/EIR has flagrantly  
12 cobbled together pieces of the invalidated 2015 EIS/EIR interwoven with fragmented updates  
13 from the 2019 EIS/EIR. The conditions the original project was evaluated against no longer exist.

14 7. As a result of these numerous and compounding deficiencies, the Project put forth  
15 by the Defendants poses a significant threat to the Delta, Sacramento Valley, and water resources  
16 in California, and the public is left uninformed of these impacts.

17 **II. JURISDICTION AND VENUE**

18 8. This Court has jurisdiction pursuant to 28 U.S.C § 1331 (federal question), 28  
19 U.S.C § 1346 (United States as defendant), 28 U.S.C § 2201 (declaratory relief), 28 U.S.C § 2202  
20 (injunctive relief), and the APA, 5 U.S.C. §§ 701-706.

21 9. This Court has supplemental jurisdiction over state law claims pursuant to 28  
22 U.S.C. § 1367(a) because the state law claims are related to the federal law claims and form part  
23 of the same case or controversy. Such state law claims include a claim under the California  
24 Environmental Quality Act, Public Resources Code §§ 21000 et seq., and California Code of Civil  
25 Procedure §§ 1060, 1085, 1088.5, and 1094.5.

26 10. Venue is appropriate in the Eastern District of California pursuant to 28 U.S.C. §  
27 1391(e) because defendant USBR is located in Sacramento County, and a substantial part of the  
28

1 events or omissions giving rise to the claims alleged in this Complaint occurred and will continue  
2 to occur in this judicial district.

3 11. This complaint is timely filed within any and all applicable statutes of limitations.

4 **III. INTRADISTRICT ASSIGNMENT**

5 12. Pursuant to Local Rule 120(d), intradistrict assignment of this matter to the  
6 Sacramento, Redding, or Fresno Divisions of the Court would be appropriate in that the events or  
7 omissions which give rise to Plaintiffs' claims occurred, are occurring, and/or will occur in Butte,  
8 Colusa, Fresno, Glenn, Kings, Merced, Placer, Sacramento, San Benito, San Joaquin, Santa Clara,  
9 Shasta, Stanislaus, Sutter, Tehama, Yolo, and Yuba Counties.

10 **IV. PARTIES**

11 13. Petitioner and Plaintiff AQUALLIANCE is a California Public Benefit Corporation  
12 organized to protect waters in the northern Sacramento River's watershed to sustain family farms,  
13 communities, creeks and rivers, native flora and fauna, vernal pools, and recreation. AquAlliance  
14 has approximately 637 members who rely on Sacramento Valley groundwater for their livelihoods  
15 and live, recreate and work in and around waters of the State of California, including the  
16 Sacramento River, its tributaries, and the Sacramento-San Joaquin River Bay Delta ("Bay Delta").  
17 AquAlliance's mission is to defend northern California waters and to challenge threats to the  
18 hydrologic health of the Sacramento River watershed. AquAlliance is especially focused on  
19 confronting the escalating attempts to divert more and more water from the northern Sacramento  
20 River hydrologic region to other parts of California.

21 14. Petitioner and Plaintiff CALIFORNIA SPORTFISHING PROTECTION  
22 ALLIANCE ("CSPA") is a non-profit public benefit corporation organized under the laws of the  
23 State of California with its main office in Stockton, California. CSPA has approximately 2000  
24 members who live, recreate and work in and around waters of the State of California, including the  
25 Sacramento River, San Joaquin River, the Delta, Suisun Bay and San Pablo Bay. CSPA is  
26 dedicated to the preservation, protection, and defense of the environment, the wildlife and the  
27 natural resources of all waters of California. To further these goals, CSPA actively seeks federal  
28 and state agency implementation of the Act and other laws and, where necessary, directly initiates

1 enforcement actions on behalf of itself and its members. CSPA has been actively engaged in  
2 proceedings relating to the environmental impact of the SWP as well as the federal Central Valley  
3 Project (“CVP”).

4 15. Petitioner and Plaintiff CALIFORNIA WATER IMPACT NETWORK (“C-WIN”)  
5 is a California non-profit public benefit organization with its principal place of business in Santa  
6 Barbara, California. C-WIN’s organization purpose is the protection and restoration of fish and  
7 wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and other  
8 natural environmental resources and uses of the rivers and streams of California, including the  
9 Bay-Delta, its watershed and its underlying groundwater resources. C-WIN has members who  
10 reside in, use, and enjoy the Bay-Delta and inhabit and use its watershed. They use the rivers of  
11 the Central Valley and the Bay-Delta for nature study, recreation, and aesthetic enjoyment. C-WIN  
12 and its members have been involved in the administrative proceedings that have been provided to  
13 date for the EIR/EIS, each discussed, below, including providing written comments.

14 16. Petitioner and Plaintiff CENTRAL DELTA WATER AGENCY (“CDWA”) is a  
15 political subdivision of the State of California created by the California Legislature under the  
16 Central Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix, 117-  
17 1.1, et seq.), by the provisions of which CDWA came into existence in January of 1974. CDWA’s  
18 boundaries are specified in Water Code Appendix section 117-9.1 and encompass approximately  
19 120,000 acres, which are located entirely within both the western portion of San Joaquin County  
20 and the “Sacramento-San Joaquin Delta” as defined in California Water Code section 12220.  
21 While the lands within the agency are primarily devoted to agriculture, said lands are also devoted  
22 to numerous other uses including recreational, wildlife habitat, open space, residential,  
23 commercial, and institutional uses. CDWA is empowered to “sue and be sued” and to take all  
24 reasonable and lawful actions, including to pursue legislative and legal action, that have for their  
25 general purpose either: (1) to protect the water supply of the lands within the agency against  
26 intrusion of ocean salinity; and (2) to assure the lands within the agency a dependable supply of  
27 water of suitable quality sufficient to meet present and future needs. The agency may also  
28 undertake activities to assist landowners and local districts within the agency in reclamation and

1 flood control matters. *See* Wat. Code, Appendix, 117-4.3, subd. (b) & 117-4.1, subsds. (a) and (b),  
2 respectively. CDWA may assist landowners, districts, and water right holders within its  
3 boundaries in the protection of vested water rights and may represent the interests of those parties  
4 in water right proceedings and related proceedings before courts of both the state of California and  
5 the United States to carry out the purposes of the agency. *See* Wat. Code, Appendix, 117-4.2,  
6 subd. (b). Operation of the CVP and the State Water Project (“SWP”) adversely affect flows,  
7 circulation, levels, and quality of water in the channels within the boundaries of the CDWA to the  
8 detriment of agricultural and other beneficial water users. By statute, regulation and permit, the  
9 USBR and the California Department of Water Resources (“DWR”) are supposed to fully mitigate  
10 their impacts on such other uses as well as maintain various water quality standards intended to  
11 protect the Delta estuary and in-Delta users. The CVP and SWP fail to meet these obligations on a  
12 regular basis, and the proposed Project may exacerbate DWR and USBR’s continued failure to  
13 meet their obligations, resulting in further impaired water flow, circulation, levels, and quality of  
14 water.

15       17.     Petitioner and Plaintiff SOUTH DELTA WATER AGENCY (“SDWA”) is a  
16 political subdivision of the State of California created by the California Legislature under the  
17 South Delta Water Agency Act, chapter 1089 of the statutes of 1973 (Wat. Code, Appendix, 116-  
18 1.1, et seq.), by the provisions of which SDWA came into existence in January of 1974. SDWA’s  
19 boundaries are specified in Water Code Appendix section 116-9.1 and encompass approximately  
20 148,000 acres which are located entirely within both the south-western portion of San Joaquin  
21 County and the “Sacramento-San Joaquin Delta” as defined in California Water Code section  
22 12220. While the lands within the agency are primarily devoted to agriculture, said lands are also  
23 devoted to numerous other uses including recreational, wildlife habitat, open space, residential,  
24 commercial, municipal and institutional uses. SDWA is empowered to “sue and be sued” and to  
25 take all reasonable and lawful actions, including to pursue legislative and legal actions, that have  
26 for their general purpose either: (1) to protect the water supply of the lands within the agency  
27 against intrusions of ocean salinity; and/or (2) to assure the lands within the agency a dependable  
28 supply of water of suitable quality sufficient to meet present and future needs. The agency may

1 also undertake activities to assist landowners and local districts within the agency in reclamation  
2 and flood control matters. *See* Wat. Code, Appendix, 116-4.2, subd. (b) & 116-4.1, subds. (a) and  
3 (b), respectively. SDWA may assist landowners, districts, and water right holders within its  
4 boundaries in the protection of vested water rights and may represent the interests of those parties  
5 in water right proceedings and related proceedings before courts of both the state of California and  
6 the United States to carry out the purposes of the agency. *See* Wat. Code, Appendix, 116-4.2  
7 subd. (b). Operation of the CVP and the SWP adversely affect flows, circulation, levels, and  
8 quality of water in the channels within the boundaries of the SDWA to the detriment of  
9 agricultural and other beneficial water users. By statute, regulation and permit, the USBR and  
10 DWR are supposed to fully mitigate their impacts on such other uses as well as maintain various  
11 water quality standards intended to protect the Delta estuary and in-Delta users. The CVP and  
12 SWP fail to meet these obligations on a regular basis, and the proposed Project may exacerbate  
13 DWR and USBR's continued failure to meet their obligations, resulting in further impaired water  
14 flow, circulation, levels, and quality of water.

15 18. Respondent and Defendant UNITED STATES BUREAU OF RECLAMATION  
16 ("USBR") is a subdivision of the Department of the Interior, an agency of the United States of  
17 America, and is the Project's lead agency under the NEPA, 28 U.S.C. section 4321 et seq.

18 19. Respondent and Defendant SAN LUIS & DELTA-MENDOTA WATER  
19 AUTHORITY ("SLDMWA") is a joint powers agency established under California law, and  
20 consists of water agencies representing federal and exchange water service contractors within the  
21 western San Joaquin Valley, San Benito and Santa Clara counties in the State of California.  
22 SLMDWA is the Project's lead agency under CEQA.

23 20. Defendant David Bernhardt is the Secretary of the United States Department of  
24 Interior. Plaintiffs name Secretary Bernhardt in this action in his official capacity, for his actions  
25 or failures to act in an official capacity, or under color of legal authority. Secretary Bernhardt is  
26 responsible for ensuring that the Department of Interior's actions comply with its obligations and  
27 with the APA.

28

1           21. Defendant UNITED STATES DEPARTMENT OF INTERIOR is responsible for  
2 the administration and implementation of the federal reclamation laws, including the 1902  
3 Reclamation Act, as amended, and others, and for projects operating under its authority, including  
4 the CVP.

5           22. The true names and capacities, whether individual, corporate, associate,  
6 coconspirator, partner or alter-ego of those Defendants and Respondents sued herein under the  
7 fictitious names of DOES 1 through 100, inclusive, are not known to Plaintiffs, who therefore sue  
8 those Defendants and Respondents by such fictitious names. Plaintiffs will ask leave of court to  
9 amend this Complaint and insert the true names and capacities of these defendants and  
10 respondents when the same have been ascertained. Plaintiffs are informed and believe and on that  
11 basis allege, that each of the Defendants and Respondents designated herein as a DOE defendant  
12 and respondent is legally responsible in some manner for the events and happenings alleged in this  
13 Complaint, and that Plaintiffs' alleged injuries were proximately caused by the defendants'  
14 conduct.

15 **V. FACTUAL AND PROCEDURAL BACKGROUND**

16           23. In late 2010 and early 2011, USBR published a Notice of Intent in the Federal  
17 Register and a Notice of Preparation in the California State Clearinghouse for a "Long-Term  
18 Water Transfers" project that would cover ten years of transfers. USBR and SLDMWA released a  
19 Draft EIS/EIR for public and agency review and comment in 2014, and a Final EIS/EIR was  
20 released in 2015. SLDMWA later approved the Project, certified the EIR, and filed a Notice of  
21 Determination, while USBR signed its Record of Decision that same year.

22           24. The so-called "Long-Term Water Transfers" project was a ten-year programmatic  
23 analysis of water transfers from willing sellers to Central Valley Project contractors south and  
24 west of the Delta. The original "Long-Term Water Transfers" would have been a destructive force  
25 on groundwater dependent communities and farms, streams, species, and habitat in the  
26 Sacramento Valley and the Delta's wildlife, water quality and legal-water users.

27  
28



1           25. Plaintiffs, along with other parties, challenged the “Long-term Water Transfers” in  
2 United States District Court for the Eastern District of California in the case *AquAlliance, et al., v.*  
3 *U.S. Bureau of Reclamation, et al.* 287 F.Supp.3d 969 (E.D. Cal. 2018) (*AquAlliance*).

4           26. On February 15, 2018, the District Court issued its Memorandum Decision and  
5 Order, finding for Plaintiffs on several core issues and some of the most significant impacts of the  
6 “Long-term Water Transfers” program and project. The District Court found violations of NEPA,  
7 CEQA and the Endangered Species Act with respect to inadequate analysis of biological impacts  
8 due to reduced delta outflow, improperly deferred mitigation for groundwater impacts, failure to  
9 adequately analyze the effectiveness of mitigation measures for groundwater impacts, inadequate  
10 mitigation for land subsidence, inadequate analysis of changed hydrologic conditions resulting  
11 from climate change, and inadequate analysis and mitigation for impacts to giant garter snake.

12           27. Rather than accept that the Court had indeed invalidated demonstrably flawed  
13 documents, the Defendants fought to avoid vacatur and decertification of the 2015 EIS/EIR and  
14 the Biological Opinion (“BiOp”). This forced the Court to ask for supplemental briefing and  
15 subsequently make clear to the unwilling Defendants that it was necessary to vacate both  
16 documents in their entirety, due to the severity and pervasiveness of the violations.

17           28. On July 5, 2018, the District Court entered judgment, vacating SLDMWA’s and  
18 USBR’s decisions to approve the Final Long-Term Water Transfers EIS/EIR and approve the  
19 Proposed Action, vacating the 2015 EIS/EIR, and vacating the BiOp.

20           29. In February of 2019, USBR and SLDMWA released a Draft Revised EIS/EIR for  
21 public comment for the Project, which purported to only cover water transfers for 2019-2024. The  
22 Project is held out by USBR and SLDMWA as merely a modified, shortened version of the  
23 “Long-term Water Transfers” program that was previously vacated. However, numerous changes  
24 to the Project, including new sellers, the shortened time-frame, and unenforceable limits on  
25 transfers combine to render the Project a distinct endeavor from the “Long-Term Water  
26 Transfers.”

27           30. Plaintiffs, wary of USBR and SLDMWA’s attempt to engage in as little  
28 environmental review as possible while purporting to comply with the District Court’s ruling in

1 *AquAlliance, supra*, 287 F.Supp.3d. 969, commented extensively on the Draft  
2 Supplemental/Revised EIS/EIR and the Final Supplemental/Revised EIS/EIR.

3 31. The EIS/EIR is nothing more than USBR and SLDMWA's failed attempt to update  
4 the 2015 FEIS/EIR document, in piecemeal fashion, in response to the Court's ruling in  
5 *AquAlliance, supra*, 287 F.Supp.3d. 969. Not only have USBR and SLDMWA not made changes  
6 to rectify the flaws detailed in the District Court's ruling, they have created a EIS/EIR that is  
7 confusing and unusable as an informational document.

8 32. USBR and SLDMWA have failed to provide an accurate project description as  
9 required under both NEPA and CEQA. The most glaring example of the many flaws in the  
10 Project description is the inclusion of two unenforceable assurances: that transfers in any one year  
11 would not exceed 250,000 acre-feet; and that transfers would only occur in two years out of the  
12 Project's 2019-2024 period. These assurances are not actual elements of the Project as they are  
13 unenforceable. There is no mitigation measure, coordinated operations agreement, or any other  
14 enforcement mechanism to this effect. The EIS/EIR also makes the critical error of relying on the  
15 same baseline as the 2015 EIS/EIR, despite significant changed circumstances and new  
16 information.

17 33. Most troubling of all is that the Project, despite having a six-year as opposed to a  
18 ten-year time frame, would still pose a considerable threat to groundwater dependent communities  
19 and farms, streams, species, and habitat in the Sacramento Valley and the Delta, wildlife, water  
20 quality, and in-Delta water users. USBR and SLDMWA do not take these significant risks  
21 seriously, as reflected in the EIS/EIR's analysis of the Project's impacts.

22 34. The Project's water transfers would be facilitated by groundwater substitution,  
23 reservoir releases, cropland idling, crop shifting, and conservation. These methods each carry  
24 their own impacts on the environment, while exacerbating impacts from other sources such as  
25 global climate change.

26 35. Groundwater substitution impacts groundwater, risking basin overdraft, stream  
27 depletion and cones of depression. Cones of depression are not isolated to single points, but cause  
28 region-wide impacts across zones of influence. Stream depletion occurs when lowered

1 groundwater levels cause increased seepage from streams. These effects from excess groundwater  
2 pumping cause impacts to agriculture operations, the availability of groundwater for other users,  
3 and biological impacts to species that rely on the depleted streams as habitat as well as terrestrial  
4 habitat.

5 36. Significant impacts to groundwater would conflict with local agencies' compliance  
6 with the Sustainable Groundwater Management Act and the Public Trust Doctrine.

7 37. The Project would impact groundwater basins, such as the Sacramento Valley  
8 Groundwater Basin that is already in decline with all but one of the Project's subbasins rated as  
9 high or medium priority under SGMA. The Project will exacerbate existing conditions, and impair  
10 existing domestic and agricultural wells.

11 38. Moreover, the Project will exacerbate the impacts of global climate change on  
12 groundwater resources. As climate change limits the availability of surface water, groundwater  
13 will be increasingly relied on, further threatening existing groundwater levels. The Project would  
14 compound those impacts through groundwater substitutions for surface water sold.

15 39. Drastic enough groundwater depletion creates the risk of ground subsidence, which  
16 is already occurring in the seller service areas.

17 40. Stream depletion leads to impacts to deep-rooted vegetation. Loss of vegetation in  
18 conjunction with stream depletion leads to higher water temperatures and increased  
19 evapotranspiration, further lowering surface water levels. These impacts compound one another  
20 and would devastate wildlife inhabit those streams.

21 41. Crop idling and shifting destroys habitat for endangered species such as the giant  
22 garter snake. The giant garter snake relies on active rice fields and the supporting water  
23 conveyance infrastructure as alternative habitat in the absence of suitable natural marsh. The  
24 Project could result in the elimination of 12 percent of the active rice fields by crop idling and  
25 shifting, directly affecting giant garter snake habitat.

26 42. The Project's mitigation for impacts to giant garter snakes is inadequate and flies in  
27 the face of well-established science. The Project would only protect the water conveyance  
28 infrastructure associated with rice fields, the canals, levees, and ditches that giant garter snake use

1 for intermittent period while travelling between more established habitat. Protecting only the  
2 conveyance features, and not the actual rice fields, jeopardizes giant garter snake populations.  
3 Rice fields are unquestionably important habitat resource for giant garter snakes.

4 43. Limiting giant garter snake habitat would lead to increased dispersal, predation, and  
5 reduced reproduction leading to population-level effects.

6 44. Much like groundwater impacts, the Project would also exacerbate the effects of  
7 global climate change on giant garter snakes. Destruction of habitat and reduced streamflow  
8 caused by global climate change would be magnified by the Project's water transfer methods.  
9 Further, increased temperatures put additional stress on ectothermic animals such as the giant  
10 garter snake that must constantly regulate body temperatures within narrow ranges.

11 45. The full extent of the Project's impacts on these environmental resources, however,  
12 cannot be known as USBR and SLDMWA have failed to incorporate new information and  
13 changed circumstances into their analysis of the Project. Further, the EIS/EIR relies on outdated  
14 studies and methodologies to analyze and mitigate impacts

15 **VI. LEGAL FRAMEWORK**

16 Administrative Procedure Act

17 46. The APA confers a right of judicial review on any person that is adversely affected  
18 by agency action. *See* 5 U.S.C. § 702.

19 47. The APA provides that the reviewing court "shall . . . hold unlawful and set aside  
20 agency action, findings, and conclusions found to be [] arbitrary, capricious, an abuse of  
21 discretion, or otherwise not in accordance with law," as well as findings that are "unsupported by  
22 substantial evidence." 5 U.S.C. § 706(2)(A), (E). Claimed violations of both NEPA and the  
23 CPVIA are reviewed under the APA.

24 National Environmental Policy Act

25 48. The Project is subject to the environmental review process of NEPA, 42 U.S.C. §  
26 4321. NEPA requires the Federal government to use all practicable means to improve and  
27 coordinate federal activities to create and maintain conditions in which people and nature can exist  
28

1 in “productive harmony.” 42 U.S.C. § 4331. NEPA is an environmental full-disclosure law so  
2 that federal agencies must consider all environmental consequences of their decisions.

3 49. “NEPA . . . makes environmental protection a part of the mandate of every federal  
4 agency and department,” *Calvert Cliffs’ Coord. Com. v. United States*, 440 F.2d 1109, 112 (D.C.  
5 Cir. 1971), and is the “basic national charter for protection of the environment.” 40 C.F.R. §  
6 1500.1(a). Its purpose is “to help public officials make decisions that are based on understanding  
7 of environmental consequences, and take actions that protect, restore, and enhance the  
8 environment.” *Id.* § 1500.1(c). The Council on Environmental Quality (“CEQ”), an agency  
9 within the Executive Office of the President, has promulgated regulations implementing NEPA.  
10 *See* 10 C.F.R. § 1021.103.

11 50. Among other things, NEPA requires all agencies of the federal government to  
12 prepare a “detailed statement” that discusses the environmental effects of, and reasonable  
13 alternatives to, all “major Federal actions significantly affecting the quality of the human  
14 environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly known as an environmental  
15 impact statement (“EIS”). An EIS must describe: (1) the “environmental impact of the proposed  
16 action”; (2) any “adverse environmental effects which cannot be avoided should the proposal be  
17 implemented”; and (3) any “alternatives to the proposed action.” *Id.* The environmental “effects”  
18 that must be considered in an EIS include “indirect effects, which are caused by the action and are  
19 later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. §  
20 1508.8(b).

#### 21 California Environmental Quality Act

22 51. CEQA has two purposes: environmental protection and informed self-government.  
23 *Woodward Park Homeowners Assn., Inc. v. City of Fresno*, 150 Cal.App.4th 683, 690-691 (2007).  
24 CEQA is “to be interpreted to afford the fullest possible protection to the environment within the  
25 reasonable scope of the statutory language.” *Mountain Lion Foundation v. Fish & Game Com.*, 16  
26 Cal.4th 105, 134 (1997). CEQA requires agencies to “take all action necessary to protect,  
27 rehabilitate, and enhance the environmental quality of the state.” Pub. Resources Code, §  
28 21001(a).

1 52. Pursuant to CEQA, a “project” is an activity which may cause either direct physical  
 2 change in the environment, or reasonably foreseeable indirect physical change in the environment  
 3 (Pub. Resources Code § 21065(a)); and a “discretionary” project is one that is subject to  
 4 judgmental controls, where the agency can use its judgment to decide whether and how to carry  
 5 out a project. Cal. Code Regs., tit. 14, ch. 3 (“CEQA Guidelines”), § 15002(i). Prior to  
 6 approving any discretionary project, an agency must fully disclose and analyze all of the project’s  
 7 potentially significant direct, indirect, and cumulative environmental effects. *See, e.g.*, CEQA  
 8 Guidelines § 15002(f)), and that public agencies avoid or minimize such environmental damage  
 9 where feasible. CEQA Guidelines § 15021(a). Pursuant to this duty, no public agency may  
 10 approve or carry out a project where one or more significant effects on the environment may  
 11 occur if the project is approved, unless certain narrow findings are made. CEQA Guidelines §§  
 12 15091, 15093.

#### 13 Public Trust Doctrine

14 53. In California, pursuant to the Public Trust Doctrine, governmental entities and  
 15 agencies are required to consider and prioritize public trust uses including navigation, protection  
 16 of fisheries, recreation, and preservation of trust lands in their natural state. *Marks v.*  
 17 *Whitney* (1971) 6 Cal.3d 251, 259–260. These duties apply not only to state agencies but also to  
 18 regional and local governmental entities. *See, Zack’s, Inc. v. City of Sausalito* (2008) 165  
 19 Cal.App.4th 1163, 1180; *Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166  
 20 Cal.App.4th 1349, 1370. Indeed, “[a]ny action which will adversely affect traditional public rights  
 21 in trust lands is a matter of general public interest and should therefore be made only if there has  
 22 been full consideration of the state’s public interest in the matter.” *San Francisco Baykeeper, Inc.*  
 23 *v. California State Lands Comm.* (2015) 242 Cal.App.4th 202, 234 (emphasis added); *Env’tl. Law*  
 24 *Foundation v. State Water Resources Control Bd.*, (2018) 26 Cal.App.5th 844.

#### 25 **VII. STANDING**

26 54. Members of AquAlliance, CSPA, and C-WIN reside in the Bay-Delta, the  
 27 Sacramento River valley, and the San Joaquin River valley. AquAlliance’s members rely on  
 28 groundwater, rivers, and streams for their homes, businesses, recreation, to irrigate crops, and to

1 participate in the economy of the region. AquAlliance's members play an active role in water  
2 education, planning, policy, and protection. CSPA and its members actively participate in water  
3 rights and water quality processes, engage in education and organization of the fishing  
4 community, conduct restoration efforts, and vigorously enforce environmental laws enacted to  
5 protect fisheries, habitat and water quality. AquAlliance's, CSPA's, and C-WIN's members  
6 reside and own property throughout California as well as in those areas served by the Central  
7 Valley and State Water Projects, and use the waters, including groundwater, affected by the USBR  
8 and SLMWDA Project, for gardening, landscaping, and growing crops. As water contractors  
9 begin pumping additional groundwater in order to replace the CVP, SWP, and Yuba River water  
10 they transfer, the Project risks degrading or lowering the groundwater in areas where Plaintiffs'  
11 members operate wells or otherwise rely on groundwater to maintain their properties.

12         55. Members of AquAlliance, CSPA, and C-WIN use the Bay-Delta, the Sacramento  
13 River and its tributaries, and the San Joaquin River and its tributaries to fish, sail, boat, kayak,  
14 swim, birdwatch, hike, view wildlife and engage in scientific study, including monitoring  
15 activities. AquAlliance's, CSPA's, and C-WIN's members have enjoyed fishing for salmon and  
16 other fish in the Delta, San Francisco Bay, and the Sacramento River watershed, whose numbers  
17 and vitality depend on an intact and healthy ecosystem in the Delta, San Francisco Bay, and the  
18 Sacramento River watershed. Where elements of that ecosystem are reduced or eliminated,  
19 AquAlliance's, CSPA's, and C-WIN's members' recreational uses and aesthetic enjoyment of  
20 those areas are reduced by their awareness of the waterway and habitat degradation. As the  
21 degradation of the rivers, their tributaries, and the Delta's ecosystem is further exacerbated,  
22 Plaintiffs members' catch fewer fish, and observe fewer wildlife. The catching and killing of  
23 Delta smelt and the drastic reductions in their population numbers substantially alter the ecological  
24 balance in the Delta and San Francisco Bay and reduce Plaintiffs' members' aesthetic enjoyment  
25 of these areas as they are boating and fishing.

26         56. CDWA and SDWA constituent land owners, water rights holders and beneficial  
27 water users are located in the Delta and rely on surface water and groundwater for their homes,  
28 businesses, recreation, to irrigate crops, and to participate in the economy of the region. These

1 landowners, water rights holders and beneficial water users use the waters, including groundwater,  
2 affected by the USBR and SLMWDA Project, for agriculture, recreation, wildlife habitat, open  
3 space as well as residential, commercial, municipal and institutional uses. The Project impairs  
4 these beneficial uses of water by negatively impacting water quantities, levels, quality, and  
5 circulation, among other impacts. The Project's impacts on biological resources, including  
6 impacts to protected species, also impairs these Plaintiffs' use and enjoyment of the Delta region  
7 for recreational and other uses.

8         57. Thus, the interests of Plaintiffs' members, landowners and water rights holders  
9 have been, are being, and will continue to be adversely affected by USBR and SLDMWA's failure  
10 to comply with NEPA and CEQA and the likely dramatic impacts to groundwaters, surface  
11 waters, and associated species, ecosystems, and human uses. The relief sought herein will redress  
12 the harms to Plaintiffs and their members, landowners and water rights holders caused by  
13 Defendants' failure to comply with CEQA and NEPA.

14         58. AquAlliance, CSPA, C-WIN, CDWA, and SDWA, their members, officers,  
15 landowners and water rights holders are deeply concerned about the adverse consequences of the  
16 USBR and SLDMWA continuation of water transfers, year after year, with inadequate  
17 environmental review of the adverse direct, indirect, and cumulative impacts of the continuing  
18 transfers approved and facilitated by the state and federal governments. These proposed transfers  
19 will require the use of additional groundwater, increase depletion of Sacramento Valley  
20 groundwater basins and streams, residential and agricultural wells, and have potentially  
21 catastrophic impacts on the endangered species, including but not limited to Delta smelt, winter-  
22 run and spring-run salmon, giant garter snake, and the yellow-billed cuckoo. Plaintiffs' members,  
23 landowners and water rights holders will be injured by the additional water diverted from  
24 groundwater basins and resulting stream impacts without adequate environmental analysis.  
25 Consequently, Plaintiffs and their members, landowners and water rights holders would be  
26 directly, adversely, and irreparably harmed by the project and its components, as described herein,  
27 until and unless this Court provides the relief prayed for in this complaint.

28



1           59. Failure by USBR and SLDMWA to ensure that the Project does not impact listed  
2 species and their habitats harms Plaintiffs' members', officers', landowners', and water rights  
3 holders' interests in the species. Unless the requested relief is granted, Plaintiffs' interests will  
4 continue to be injured. The injuries described above are actual, concrete injuries that will occur  
5 unless relief is granted by this Court. The relief sought herein, USBR and SLDMWA's  
6 compliance with CEQA and NEPA, would redress Plaintiffs' injuries. Plaintiffs have no other  
7 adequate remedy at law, and they bring this action on behalf of their adversely affected members.

8 **VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9           60. Plaintiffs have performed all conditions precedent to this filing and participated in  
10 the administrative process. Plaintiffs actively participated in the administrative process by  
11 submitting comments, along with other public agencies, organizations, and members of the public,  
12 outlining the claims contained herein. As such, Plaintiffs have fully exhausted their administrative  
13 remedies, to the extent such remedies exist and to the extent that exhaustion of administrative  
14 remedies is legally necessary.

15           61. Plaintiffs possess no other remedy to challenge Defendants' abuses of discretion  
16 and failures to comply with applicable laws and regulations.

17 **IX. NOTICE OF CEQA SUIT**

18           62. Plaintiffs have complied with California Public Resources Code section 21167.5 by  
19 providing written notice of commencement of this action to defendant SLDMWA prior to filing  
20 this Complaint. A true and correct copy of the notice provided pursuant thereto, with proof of  
21 service thereof, is attached hereto as Exhibit A.

22 **X. ELECTION TO PREPARE RECORD**

23           63. Petitioners elect to prepare the CEQA administrative record in this proceeding  
24 pursuant to Public Resources Code section 21167.6(b)(2). Petitioners' election is attached hereto  
25 as Exhibit B.

26 **XI. PRIVATE ATTORNEY GENERAL DOCTRINE**

27  
28

1           64.     Petitioners and Plaintiffs bring this action as a private attorneys general pursuant to  
2 California Code of Civil Procedure section 1021.5, and any other applicable legal theory, to  
3 enforce important rights affecting the public interest.

4           65.     Issuance of the relief requested in this Petition and Complaint will confer  
5 significant benefits on the general public by, among other benefits: (1) requiring SLDMWA to  
6 properly disclose, analyze and mitigate the direct, indirect, and cumulative impacts of the Projects  
7 that were not properly disclosed, analyzed or mitigated, (2) ensuring that SLDMWA properly  
8 considers mitigation measures to reduce or avoid the Projects' potentially significant, adverse  
9 environmental effects, (3) requiring SLDMWA to implement all feasible alternatives and  
10 mitigation measures to avoid such adverse effects or reduce them to less-than-significant levels,  
11 and (4) ensuring that SLDMWA affords the public and affected agencies with the opportunity to  
12 review and comment on potentially significant Project impacts, and receiving a meaningful and  
13 complete response to any such comments on such issues, prior to the approval of such projects.

14           66.     Issuance of the relief requested in this Petition will result in the enforcement of  
15 important rights affecting the public interest. By compelling SLDMWA to complete a legally  
16 adequate analysis of the Projects, to protect public and natural resources, SLDMWA will be  
17 required to properly and publicly disclose and analyze all of the Projects' potentially significant,  
18 adverse environmental effects, and to ensure that all feasible mitigation measures or alternatives  
19 that would reduce or avoid the Project's potentially significant, adverse environmental impacts are  
20 implemented.

21           67.     The necessity and financial burden of enforcement are such as to make an award of  
22 attorneys' fees appropriate in this proceeding. Absent enforcement by Petitioners and Plaintiffs,  
23 the Project might otherwise be deemed valid despite its legally and factually inadequate  
24 disclosures, analysis, conclusions, mitigation measures, and alternatives, among other things, and,  
25 as a result, potentially significant, adverse environmental effects might otherwise have evaded  
26 legally adequate environmental review and mitigation in accordance with the California  
27 Legislature's policy, in adopting CEQA, of affording the greatest protections to the environment  
28 within the scope of the statute.

1 **INJUNCTIVE AND DECLARATORY RELIEF**

2 68. Injunctive relief is necessary to prevent Defendants from continuing to engage in  
3 the unlawful practices alleged herein. Defendants and persons acting in concert therewith have  
4 done, are now doing, and will continue to do or cause to be done, the above-described illegal acts  
5 unless restrained or enjoined by this Court. Plaintiffs have no plain, speedy, or adequate remedy  
6 at law, in that pecuniary compensation alone would not afford adequate and complete relief.  
7 Unless Defendants are restrained from committing further illegal acts, their above-described acts  
8 will cause great and irreparable damage to Plaintiffs.

9 69. An actual controversy now exists between Plaintiffs and Defendants concerning  
10 their rights, privileges, and obligations in that Plaintiffs contend that Defendants' above-  
11 mentioned actions have violated and will continue to violate their rights under federal and state  
12 law and Defendants contend in all respects to the contrary.

13 **FIRST CLAIM FOR RELIEF**

14 **VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT**

15 **(By Plaintiffs against USBR and Does 1 through 200)**

16 70. Plaintiffs incorporate by reference each and every allegation contained in  
17 Paragraphs 1 through 128 as though fully set forth herein.

18 71. The USBR has failed to prepare an EIS that complies with NEPA and satisfies its  
19 duty to provide good faith public disclosure of the Project's impacts. These deficiencies include,  
20 without limitation, the following:

21 **The EIS/EIR Relies on an Unstable Project Description**

22 72. Per USBR's own NEPA regulations, an EIS must include a description of the  
23 proposed action. 43 C.F.R. § 46.415, subd. (a)(2); see also 40 C.F.R. § 1502.14, subd. (b) [an EIS  
24 must "[d]evote substantial treatment to each alternative considered in detail including the proposed  
25 action . . ."].

26 73. The EIS/EIR's project description is deficient because numerous details of the  
27 proposed Project are missing, provided details are contradictory, and the EIR/EIS makes  
28 assurances regarding Project operations without any enforcement mechanism.

1           74.     The EIS/EIR describes the Project as restricting transfers to 250,000 acre feet per  
2 year, yet no legally enforceable element of the Project would enforce the purported annual  
3 restriction.

4           75.     The EIS/EIR describes the Project as only including transfers for two years  
5 between 2019-2024, yet no legally enforcement element of the Project would restrict transfers to  
6 only two years of the 2019-2024 period.

7           76.     The EIS/EIR’s project description is also deficient because it is inconsistent with  
8 the impact analysis. The EIS/EIR continues to analyze the impacts of the 2015-2024 water  
9 transfer project while describing a 2019-2024 water transfer project.

10          77.     The Project now includes additional sellers that are not reflected in the EIS/EIR’s  
11 project description.

12                   The EIS/EIR Reflects Piecemealed Review of the Underlying Project

13          78.     The Project’s EIS/EIR is the result of impermissible project piecemealing by the  
14 USBR in violation of NEPA. CEQ regulations section 1502.4(a) states that “[p]roposals or parts  
15 of proposals which are related to each other closely enough to be, in effect, a single course of  
16 action shall be evaluated in a single impact statement.” CEQ regulations section 1508.25(a)(1),  
17 meanwhile, directs agencies to study “connected actions” in “the same impact statement,” and sets  
18 forth criteria for determining whether actions are “connected.”

19          79.     The EIS/EIR also impermissibly piecemeals review of the Project because the  
20 Project is merely a segment of the Sacramento Valley Water Management Agreement, the  
21 Environmental Water Account, and the Yuba Accord that USBR sought and still seeks to  
22 implement.

23                   Failure to Provide Sufficient Information to Generate Meaningful Comment

24          80.     A lead agency violates NEPA by “failing to provide the public with ‘sufficient  
25 information to . . . generate meaningful comment’” *Sierra Club v. Flowers*, 423 F.Supp.2d 1273,  
26 1329 (S.D. Fla. 2006) quoting 33 C.F.R. § 325.3(a); 40 C.F.R. §§ 15001.(b), 1500.2, 1506.6.

27          81.     Here, the EIS/EIR is disorganized, relevant information is inaccessible, and the  
28 analysis is incomplete.

Inadequate Analysis of Project Alternatives

1  
2 82. NEPA requires an EIS to discuss, among other things, alternatives to the proposed  
3 action. 42 U.S.C. § 4332(2)(C). NEPA’s implementing regulations describe the analysis of  
4 alternatives as “the heart of the environmental impact statement.” CEQ regulations, § 1502.14.  
5 The range of alternatives that an EIS must consider is “dictated by the nature and scope of the  
6 proposed action.” *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir.  
7 2008). Yet agencies may not define the project’s purpose and need in terms so “unreasonably  
8 narrow,” that only one alternative would accomplish the goals of the project. *Nat’l Parks &*  
9 *Conservation Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2010).

10 83. The EIS/EIR’s analysis of alternatives fails to comply with NEPA because it failed  
11 to consider a reasonable range of alternatives, in light of the changed circumstances, new  
12 information, and changes to the Project; instead, continuing to rely on the alternatives included in  
13 the invalidated 2015 EIS/EIR.

Inadequate Analysis of Baseline Conditions and Project Impacts

14  
15 84. Under NEPA, Courts “review agency decisions to ensure that ‘the agency has taken  
16 a “hard look” at the potential environmental consequences of the proposed action.’” *Nw. Envtl.*  
17 *Advocates v. NMFS*, 460 F.3d 1125, 1133 (9th Cir. 2006) (quoting *Klamath-Siskiyou Wildlands*  
18 *Ctr.*, 387 F.3d 989, 993 (9th Cir. Or. 2004)). Further, NEPA requires that the agency provide the  
19 data on which it bases its environmental analysis. *See Lands Council*, 537 F.3d at 994 (holding  
20 that an agency must support its conclusions with studies that the agency deems reliable.

21 85. Additionally, an agency must supplement an EIS where there are significant new  
22 circumstances or information relevant to a project’s environmental concerns. 40 C.F.R. 1502.9,  
23 subd. (c)(ii); see also *Russell Country Sportsmen v. United States Forest Serv.*, 668 F.3d 1037,  
24 1045 (9th Cir. 2011). Failure to account for such changes renders an EIS’s impact analysis legally  
25 deficient. *See N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 715 (10th Cir. 2009).

26 86. Here, the EIS/EIR does not contain sufficient information to support its conclusion  
27 for many resource areas including, but not limited to:

- 28 a. Vegetation and Wildlife;

- b. Climate Change;
- c. Groundwater;
- d. Water Supply;
- e. Water Quality;
- f. Geology and Soils;
- g. Air Quality;
- h. Fisheries;
- i. Regional Economics;
- j. Environmental Justice;

Defective Scope of Cumulative Projects

87. NEPA regulations require USBR to consider cumulative effects which “result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions” with the goal of making sure that “individually minor but collectively significant” actions are properly analyzed. 40 C.F.R. § 1508.7; see also *Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002) (purpose is to avoid “the tyranny of small decisions”). Here, however, the EIS/EIR failed to consider the effects of the Project combined with the implementation of other projects.

88. The EIS/EIR fails to include probable future projects in its cumulative impact analysis, including the Addendum to the Coordinated Operation Agreements of the Central Valley Project and the State Water Project, the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Amendments and Voluntary Settlement Agreements, , the Sites Reservoir project, other water transfers, the California Department of Water Resources’ Delta Conveyance Project, and amendments to State Water Project water supply contracts.

Inadequate Mitigation

89. NEPA’s implementing regulations require agencies to discuss potential mitigation measures in their EISs and decision documents. See 40 C.F.R. §§ 1502.14(f), 1502.16(e)-(h), 1505.2(c), 1508.25(b)(3); see also *Id.* § 1508.20 (defining “mitigation”). Mitigation must “be discussed in sufficient detail to ensure that environmental consequences have been fairly

1 evaluated.” *Methow Valley Citizens Council*, 490 U.S. at 353. Such discussion necessarily  
2 includes “an assessment of whether the proposed mitigation measures can be effective.” *S. Fork*  
3 *Band Council of W. Shoshone of Nev. v. U.S. Dep’t of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

4 The EIS/EIR’s analysis of proposed mitigation is defective under this standard.

5 90. The EIS/EIR improperly defers analysis and formulation of mitigation measures,  
6 and what mitigation measures that are included in the EIS/EIR’s are unenforceable or insufficient.

7 91. The EIS/EIR’s inadequate mitigation measures include, but are not limited to:

- 8 a. Mitigation for tree loss;
- 9 b. Mitigation for streamflow loss;
- 10 c. Mitigation for groundwater depletion and subsidence;
- 11 d. Mitigation for third-party water supply impacts;
- 12 e. Mitigation for impacts to Giant Garter Snakes.

13 92. Additionally, the EIS/EIR describes the Project as having a 250,000 acre feet per  
14 year transfer limit, and claims that transfers would only occur in two years of the 2019-2024  
15 Project. These restrictions are *de facto* mitigation measures, and as such they must be defined  
16 with specificity and be legally enforceable.

17 93. The USBR’s actions in failing to comply with NEPA are arbitrary, capricious, and  
18 abuse of discretion and contrary to law in violation of the APA.

19 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

20 **SECOND CLAIM FOR RELIEF**

21 **VIOLATIONS OF CEQA**

22 **(By Petitioners and Plaintiffs against SLDMWA)**

23 94. Plaintiffs incorporate by reference each and every allegation contained in  
24 Paragraphs 1 through 128 as though fully set forth herein.

25 95. The SLDMWA prejudicially abused its discretion in certifying the EIS/EIR. The  
26 SLDMWA did not proceed in the manner required by law and its decisions in approving the  
27 Project and certifying the EIS/EIR are not supported by substantial evidence. Pub. Resources  
28

1 Code § 21168.5; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40  
2 Cal.4th 412, 426 (Cal. 2007). These legal deficiencies include, without limitation, the following:

3 The Project Description is Vague, Incomplete, and Unstable

4 96. CEQA requires that an EIR include an accurate project description, and that the  
5 nature and objective of a project be fully disclosed and fairly evaluated in an EIR. *San Joaquin*  
6 *Raptor Rescue Center v. County of Merced*, 149 Cal.App.4th 646, 655 (2007) (*SJ Raptor*). An  
7 EIR should contain a “sufficient degree of analysis to provide decision-makers with information  
8 which enables them to make a decision which intelligently takes account of environmental  
9 consequences.” CEQA Guidelines § 15151. “An accurate, stable and finite project description is  
10 the sine qua non of an informative and legally sufficient EIR.” *County of Inyo v. City of Los*  
11 *Angeles*, 71 Cal. App. 3d 185, 193 (1977). “Only through an accurate view of the project may  
12 affected outsiders and public decision makers balance the proposal’s benefit against its  
13 environmental cost, consider mitigation measures, assess the advantage of terminating the  
14 proposal . . . and weigh other alternatives in the balance.” *Id.* at 192-93. A project description may  
15 not provide conflicting signals to decision makers and the public about the nature and scope of the  
16 project as such a description is fundamentally inadequate and misleading. *SJ Raptor, supra*, 149  
17 Cal. App. 4th at 655-656.

18 97. The EIS/EIR’s project description is deficient because numerous details of the  
19 proposed Project are missing, provided details are contradictory, and the EIR/EIS makes  
20 assurances regarding Project operations without any enforcement mechanism.

21 98. The EIS/EIR describes the Project as restricting transfers to 250,000 acre feet per  
22 year, yet no legally enforceable element of the Project would enforce the purported annual  
23 restriction.

24 99. The EIS/EIR describes the Project as only including transfers for two of the 2019-  
25 2024 years, yet no legally enforcement element of the Project would restrict transfers to only two  
26 years of the 2019-2024 transfer period.

27  
28



1 100. SLDMWA states, in its responses to comments on the Final EIS/EIR, that the  
2 project will only include single year transfers, while the Final EIS/EIR states that multi-year  
3 transfers are covered.

4 101. The EIS/EIR's project description is also deficient because it is inconsistent with  
5 the impact analysis. Much of the EIS/EIR continues to analyze the impacts of the 2015-2024  
6 water transfer project while describing a 2019-2024 water transfer project.

7 102. The Project now includes additional sellers that are not reflected in the EIS/EIR's  
8 project description.

9 The EIS/EIR is Inadequate as an Informational Document

10 103. The information in an EIR must not only be sufficient in quantity, but it must be  
11 presented a clear manner so as to adequately inform the public and decision makers. "A reader of  
12 the FEIR could not reasonably be expected to ferret out an unreferenced discussion . . . , interpret  
13 that discussion's unexplained figures without assistance, and spontaneously incorporate them into  
14 the FEIR's own discussion of total projected supply and demand." *Vineyard Area Citizens for*  
15 *Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 442 (2007). Information  
16 scattered throughout an EIR and its appendices and supporting reports are not substitutes for good  
17 faith reasoned analysis. *Ibid.* An EIR should be written in a way that readers are not forced "to  
18 sift through" to find important components of the analysis. *San Joaquin Raptor Rescue Ctr. v.*  
19 *County of Merced* (2007) 149 Cal.App.4th 645, 659. Accordingly, an EIR is usually prepared as a  
20 stand-alone document. CEQA provides that EIRs should be prepared in a "standard format" when  
21 feasible. Pub. Resources Code §§ 21100(a), 21061; CEQA Guidelines, § 15122. It is  
22 inappropriate, however, to use a group of documents collected together to serve the function of an  
23 EIR, as SLDMWA appears to be attempting here. *See Russian Hill Improvement Ass'n v. Board of*  
24 *Permit Appeals* (1974) 44 Cal.App.3d 158. The incomplete presentation of information is a failure  
25 to proceed in a manner required by law. *Vineyard Area Citizens, supra; Banning Ranch*  
26 *Conservancy v. City of Newport Beach*, 2 Cal.5th 918, 935 (2017).

27 104. Here, the EIS/EIR is disorganized, relevant information is inaccessible, and the  
28 analysis is incomplete.

The EIS/EIR Fails to Analyze Related Regulatory Regimes

1  
2 105. Under CEQA, lead agencies must consider related regulatory regimes in its  
3 analysis of a project, particularly in the context of analyzing project alternatives. *Banning Ranch*  
4 *Conservancy v. City of Newport Beach*, 2 Cal.5th 918, 936-937 (2017). Failure to include such  
5 analysis of related regulatory requirements is an informational deficiency and failure to proceed in  
6 the manner required by law. *Id.* at 941-942.

7 106. The EIS/EIR fails to disclose other related regulatory regimes or analyze how such  
8 regimes could impact the Project.

9 107. One example includes the EIS/EIR's failure to include any information regarding  
10 the Delta Reform Act (Wat. Code, §§ 85000 et seq.) or the Delta Stewardship Council's  
11 permitting authority over the Project as a covered action pursuant to the Delta Plan.

12 108. In addition, the EIS/EIR fails to consider procedural and substantive requirements  
13 of the Public Trust Doctrine as afforded to wildlife, water of the state, and ecosystems, for the  
14 benefit of the People of the State.

15 109. Additionally, the EIS/EIR fails to consider inconsistencies with California's  
16 Sustainable Groundwater Management Act.

The EIS/EIR Fails to Adequately Define the Project's Baseline

17  
18 110. In order to determine whether a project's impacts will be significant, CEQA  
19 requires lead agencies to compare the impact of a proposed project to the "physical environmental  
20 conditions in the vicinity of the project, as they exist at the time the notice of preparation is  
21 published." These conditions serve as the project's "baseline." CEQA Guidelines § 15125. The  
22 description of the project's baseline ensures that the public has "an understanding of the  
23 significant effects of the proposed project and its alternatives." CEQA Guidelines § 15125(a).  
24 Accurately determining the baseline environmental conditions is crucial to accurately evaluating a  
25 project's impact. *E.g., San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27  
26 Cal.App.4th 713 (1994).

27 111. The EIS/EIR's description of baseline conditions is alternatively incomplete and  
28 inaccurate, infecting and invalidating the entirety of the EIS/EIR's environmental analysis. The

1 flaws include, but are not limited to:

- 2 a. Failure to describe baseline groundwater, surface water, water supply,  
3 climate, habitat, and subsidence conditions of sellers' service areas;
- 4 b. Impermissibly relying on severely outdated baseline information from the  
5 2015 EIS/EIR to evaluate Project impacts.

6 The EIS/EIR Fails to Adequately Analyze Significant Environmental Impacts

7 112. CEQA requires that an EIR describe the proposed project's significant  
8 environmental effects. Each must be revealed and fully analyzed in the EIR. Pub. Resources  
9 Code § 21100(b), CEQA Guidelines § 15126.2(a).

10 113. The EIR/EIS's impact analysis is inadequate in part because it fails to account for  
11 new information that has become available since the original environmental review of the 2015-  
12 2024 transfers project. "If the proposed changes render the previous environmental document  
13 wholly irrelevant to the decision-making process, then it is only logical that the agency start from  
14 the beginning under [Public Resources Code] section 21151 by conducting an initial study to  
15 determine whether the project may have substantial effects on the environment." *Friends of*  
16 *College of San Mateo Gardens v. San Mateo County Community College Dist.* 1 Cal.5th 937, 951  
17 (2006). The question under CEQA is "when there is a change in plans, circumstances, or available  
18 information after a project has received initial approval, the agency's environmental review  
19 obligations turn on the value of the new information to the still pending decisionmaking process."  
20 *Id.* at 951- 951, internal quotations omitted. The CEQA lead agency must decide whether project  
21 changes require major revisions to the original document. (*Id.* at 952.)

22 114. The EIS/EIR fails to provide decision makers with sufficient analysis in numerous  
23 respects including, without limitation, the following:

- 24 a. Vegetation and Wildlife;
- 25 b. Climate Change;
- 26 c. Groundwater;
- 27 d. Water Supply;
- 28 e. Water Quality;

- 1 f. Geology and Soils;
- 2 g. Fisheries;
- 3 h. Regional Economics;

4 The EIS/EIR Fails to Adequately Evaluate Cumulative Impacts

5 115. CEQA requires that the lead agency analyze cumulative impacts. Pub. Resources  
6 Code § 21083(b)(2); CEQA Guidelines § 15064(h)(1). A cumulative impact is an impact created  
7 as a result of the project when evaluated together with other past, present, and reasonably  
8 foreseeable future projects causing related impacts. In performing a cumulative impacts analysis,  
9 the EIR must assess the significance of the incremental addition of a project to the combined  
10 individual effects of one or more separate projects. The analysis should provide sufficient data to  
11 ensure that the cumulative effects are identified and disclosed, and should make a good faith and  
12 reasonable effort at disclosing all cumulative impacts.

13 116. The EIR's cumulative impacts analysis is deficient in several respects, including  
14 the following:

- 15 a. The EIS/EIR fails to analyze the combined effects of recent past water  
16 transfer projects in combination with the Project;
- 17 b. The EIS/EIR fails to include probable future projects in its cumulative  
18 impact analysis, including the Addendum to the Coordinated Operation Agreements of the Central  
19 Valley Project and the State Water Project, the Water Quality Control Plan for the San Francisco  
20 Bay/Sacramento-San Joaquin Delta Estuary Amendments and Voluntary Settlement Agreements,  
21 the Sacramento Valley Water Management Agreement, the Sites Reservoir project, and other  
22 water transfers, the California Department of Water Resources' Delta Conveyance Project, and  
23 amendments to State Water Project water supply contracts.
- 24 c. The EIS/EIR fails to analyze or disclose the cumulative effects from  
25 reductions in Delta outflow.

26 The EIS/EIR's Mitigation Measures are Legally Inadequate

27 117. "An EIR shall describe feasible measures which could minimize significant adverse  
28 impacts." CEQA Guidelines § 15126.4(a)(1). An EIR may not defer the formulation of

1 mitigation measures to a future time, but mitigation measures may specify performance standards  
2 that would mitigate significant effects and may be accomplished in in more than one specified  
3 way. “Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or  
4 orders a report without either setting standards or demonstrating how the impact can be mitigated  
5 in the manner described in the EIR.” *Preserve Wild Santee v. City of Santee*, 210 Cal.App.4th  
6 260, 280-281 (2012).

7 118. The efficacy of a mitigation measure in remedying the identified environmental  
8 problem must be apparent in the EIR. *Sierra Club v. County of San Diego*, (2014) 231 Cal.App.4th  
9 1152, 1168; *Communities for a Better Env't v. City of Richmond*, (2010) 184 Cal.App.4th 70,  
10 95; *Gray v. County of Madera*, (2008) 167 Cal.App.4th 1099, 1116; *Cleveland Nat'l Forest*  
11 *Found. v. San Diego Ass'n of Gov'ts*, (2017) 17 Cal.App.5th 413, 433.

12 119. The EIS/EIR improperly defers analysis and formulation of mitigation measures,  
13 and what mitigation measures that are included in the EIS/EIR's are unenforceable or insufficient.

14 120. The EIS/EIR's inadequate mitigation measures include, but are not limited to:

- 15 a. Mitigation for tree loss;
- 16 b. Mitigation for streamflow loss;
- 17 c. Mitigation for groundwater depletion and subsidence;
- 18 d. Mitigation for impacts to Giant Garter Snakes.

19 121. Additionally, the EIS/EIR describes the Project as having a 250,000 acre feet per  
20 year transfer limit, and claims that transfers would only occur in two years between 2019-2024.  
21 These restrictions are *de facto* mitigation measures, and as such they must be defined with  
22 specificity and be legally enforceable.

23 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

24 The EIS/EIR Failed to Adequately Respond to Comments

25 122. Plaintiffs incorporate by reference each and every allegation contained in  
26 Paragraphs 1 through 128 as though fully set forth herein.

27 123. The lead agency must evaluate comments on the draft EIR and prepare written  
28 responses for inclusion in the final EIR. Pub. Resources Code, § 21091(d); CEQA Guidelines, §§

1 15088(a), 15132. Conclusory statements unsupported by specific references to empirical  
2 information, scientific authorities, or explanatory information are insufficient as responses to  
3 comments made by agencies or the public. CEQA Guidelines, § 15088(c). Recommendations and  
4 objections on major environmental issues that are rejected must be addressed in detail, and the  
5 lead agency should explain its reasons for not accepting those suggestions. CEQA Guidelines, §  
6 15088(c); *People v. County of Kern* (1976) 62 Cal.App.3d 761. The final EIR must acknowledge  
7 any conflicting opinions and explain why suggestions made in the comments have been rejected,  
8 supporting its statements with relevant data. See *Banning Ranch Conservancy v. City of Newport*  
9 *Beach* (2017) 2 Cal.5th 918, 940; *Berkeley Keep Jets Over the Bay Comm. v. Board of Port*  
10 *Comm'rs* (2001) 91 Cal.App.4th 1344, 1367, 1371.

11 124. Here, the EIS/EIR fails to meaningfully respond to comments regarding the project  
12 description, baseline conditions, climate, mitigation measures, groundwater effects, water supply  
13 effects, and fisheries, among others.

14 125. The EIS/EIR rejects comments regarding effects to private wells, and subsidence,  
15 within the service area for Glenn-Colusa Irrigation District, without providing evidence supporting  
16 its conclusions.

17 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

18 **THIRD CLAIM FOR RELIEF**

19 **VIOLATIONS OF PUBLIC TRUST DOCTRINE**

20 **(By Petitioners and Plaintiffs against SLDMWA)**

21 126. Plaintiffs incorporate by reference each and every allegation contained in  
22 Paragraphs 1 through 128 as though fully set forth herein.

23 127. SLDMWA abridged and abrogated its Public Trust duties by failing to conduct any  
24 identifiable Public Trust Doctrine analysis as required by law, and as necessary to protect Public Trust  
25 uses and resources. See, *San Francisco Baykeeper v. California State Lands Commission* (2015) 242  
26 Cal.App.4th 202, 242; *Envtl. Law Foundation v. State Water Resources Control Bd.*, (2018) 26  
27 Cal.App.5th 844.

28 128. WHEREFORE, Plaintiffs pray for relieve as hereinafter stated.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

1. Enter a declaratory judgment that the USBR violated NEPA by preparing an inadequate EIS;
  2. Vacate the USBR's Record of Decision for the Project;
  3. Issue a peremptory writ of mandate commanding SLDMWA to vacate and set aside its certification of the EIS/EIR, its approval of the Project, and any and all approvals rendered pursuant to and/or in furtherance of all or any part of the Project;
  4. Preliminarily and permanently enjoin Defendants from approving any water transfers encompassed by the Project unless and until Defendants comply with the requirements of NEPA, CEQA, and the Public Trust Doctrine;
  7. Permanently enjoin Defendants to return the affected environment to pre-Project conditions unless and until the Projects are brought into full compliance with CEQA, NEPA, and the Public Trust Doctrine;
  8. Award Plaintiffs the costs of this action, including their reasonable attorneys' fees;
- and,
9. Grant other such relief as the Court deems just and proper.

DATED: May 11, 2020

AQUA TERRA AERIS LAW GROUP

/s/ Jason R. Flanders  
Jason R. Flanders  
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Phone: 916-202-3018

DATED: May 11, 2020

SOLURI MESERVE, A LAW CORPORATION

/s/ Patrick M. Soluri (as authorized on 5/11/2020)

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Patrick M. Soluri  
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Agency  
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**VERIFICATION**

1  
2 I, Jason Flanders, am counsel of record for Petitioners and Plaintiffs AquAlliance,  
3 California Sportfishing Protection Alliance, California Water Impact Network. I sign for these  
4 Petitioners and Plaintiffs absent from the county of counsel and/or because facts contained in the  
5 Petition and Complaint are within the knowledge of counsel. I have read the foregoing Petition  
6 and Complaint know the contents thereof. The same is true of my own knowledge, except as to  
7 those matters that are alleged on information and belief, and as to those matters, I believe them to  
8 be true.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct. Executed this 11th day of May 2020, in Oakland, California.

11  
12 /s/ Jason R. Flanders  
13 Jason R. Flanders

14 I, Patrick Soluri, am one of the attorneys of record for Petitioners and Plaintiffs Central  
15 Delta Water Agency and South Delta Water Agency in the above-entitled action, and am  
16 authorized to execute this verification on their behalf. I sign for these Petitioners and Plaintiffs  
17 absent from the county of counsel and/or because facts contained in the Petition and Complaint are  
18 within the knowledge of counsel. I have read the foregoing petition and complaint and know the  
19 contents thereof. The same is true of my own knowledge, except as to those matters which are  
20 therein alleged on information and belief, and as to those matters, I believe it to be true.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct. Executed this 11th day of May 2020, in Sacramento, California.

23  
24 /s/ Patrick M. Soluri (as authorized on 5/11/2020)  
25 Patrick M. Soluri  
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