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 7 PROTECTION ALLIANCE, PACIFIC COAST
 FEDERATION OF FISHERMEN'S
 8 ASSOCIATIONS, and INSTITUTE FOR
 FISHERIES RESOURCES

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MERCED

13 NORTH COAST RIVERS ALLIANCE, SAN)
 FRANCISCO CRAB BOAT OWNERS)
 14 ASSOCIATION, CALIFORNIA)
 SPORTFISHING PROTECTION ALLIANCE,)
 15 PACIFIC COAST FEDERATION OF)
 FISHERMEN'S ASSOCIATIONS, and)
 16 INSTITUTE FOR FISHERIES RESOURCES,)

Civ. No.

) **VERIFIED PETITION FOR WRIT OF**
) **MANDATE AND COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF AND ATTORNEYS' FEES**

17 Petitioners and Plaintiffs,)

) **CEQA CASE**

18 v.)

19 SAN LUIS AND DELTA-MENDOTA WATER)
 AUTHORITY, and DOES 1 through 100,)
 20)

21 Respondents and Defendants,)

22 UNITED STATES BUREAU OF)
 RECLAMATION, and DOES 101 through 200,)
 23)

24 Real Parties in Interest.)

25 _____)
 26 Petitioners and Plaintiffs NORTH COAST RIVERS ALLIANCE, SAN FRANCISCO CRAB
 27 BOAT OWNERS ASSOCIATION, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE,
 28 PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, and INSTITUTE FOR

1 FISHERIES RESOURCES (collectively “petitioners” or “NCRA”) hereby petition the Court for a writ
2 of mandate against defendant and respondent SAN LUIS AND DELTA-MENDOTA WATER
3 AUTHORITY (“the Authority”) and by this Verified Petition for Writ of Mandate and Complaint for
4 Declaratory and Injunctive Relief and for Attorney’s Fees (“Verified Petition”) hereby allege as follows:

5 **INTRODUCTION**

6 1. This is a public interest citizen suit to enforce the California Environmental Quality Act,
7 Public Resources Code (“PRC”) section 21000 et seq. (“CEQA”), the Sacramento-San Joaquin Delta
8 Reform Act, Water Code section 85000 et seq. (“Delta Reform Act”), the Public Trust Doctrine and the
9 Clean Water Act, 33 U.S.C. section 1251 *et seq.* (“CWA”). Petitioners bring this action to challenge the
10 Authority’s October 10, 2019 certification of the Addendum to the Final 2009 EIS/EIR (“Addendum”)
11 for the Grassland Bypass Project (“GBP”), and all related approvals including the continuation and
12 modification of the Grassland Bypass Project, adoption of the Long-Term Storm Water Management
13 Plan 2020-2045, approval of a Mitigation Monitoring and Reporting Program, adoption of CEQA
14 Findings, and approval of a Statement of Overriding Considerations (collectively, “the Project”) which
15 will extend the term of the GPD Use Agreement. In approving the Project, the Authority violated
16 CEQA, the Delta Reform Act, the Public Trust Doctrine and the Clean Water Act.

17 2. CEQA is California’s preeminent environmental law. It requires all public agencies to
18 examine the potential adverse impacts of their actions before taking them. It is designed to protect
19 California’s extraordinary environmental resources from uninformed and needlessly destructive agency
20 actions.

21 3. CEQA requires the Authority to fully examine the impacts of its actions and to carefully
22 consider alternatives and mitigation measures that would reduce those impacts. “[I]f there are feasible
23 alternatives or feasible mitigation measures available which would substantially lessen the significant
24 environmental effects” of a project, then CEQA forbids the Authority from approving the project. PRC
25 § 21002.

26 4. The Public Trust Doctrine requires the Authority to identify beneficial uses of navigable
27 waters, including those dependent on public trust resources, and to establish and achieve the water
28 quality standards necessary to protect them.

1 5. The Clean Water Act is the nation’s preminent law regulating the discharge of pollutants
2 such as selenium to waters of the United States such as Mud Slough and the San Joaquin River. The
3 CWA requires the Authority to secure a National Pollutant Discharge Elimination System (“NPDES”)
4 permit before it may discharge pollutants from the Project to Mud Slough and the San Joaquin River. 33
5 U.S.C. §§ 1311, 1342.

6 6. The Authority improperly approved the Project, thus allowing the extension of the GBP Use
7 Agreement, without adequately examining the environmental impacts of doing so, without adequately
8 protecting public trust resources and uses, and without compliance with state and federal laws protecting
9 the Bay-Delta and its southern tributaries including the San Joaquin River and Mud Slough, and their
10 public trust resources and uses, from pollutants.

11 **VENUE AND JURISDICTION**

12 7. This Court has jurisdiction over this proceeding pursuant to Code of Civil Procedure
13 (“CCP”) sections 526 (injunctive relief), 1060 (declaratory relief), 1085 (traditional mandamus) and
14 1094.5 (administrative mandamus); PRC sections 21168 (CEQA administrative mandamus) and 21168.5
15 (CEQA traditional mandamus); and article VI, section 10 of the California Constitution.

16 8. Venue is proper in this Court pursuant to CCP sections 393 (actions against public officers)
17 and 395 (actions generally) because the Authority’s offices are located in Los Baños, California in
18 Merced County, and a substantial part of the Project is located within Merced County.

19 9. Pursuant to CCP section 388, petitioners are serving the California Attorney General with a
20 copy of this Verified Petition. Consistent with PRC section 21167.5, petitioners timely transmitted
21 notice of this suit to the Authority and the California Attorney General.

22 **PARTIES**

23 10. Petitioner NORTH COAST RIVERS ALLIANCE (“NCRA”) is a non-profit unincorporated
24 association with members throughout Northern California. NCRA was formed for the purpose of
25 protecting California’s rivers and their watersheds from the adverse effects of excessive water
26 diversions, ill-planned urban development, harmful resource extraction, pollution, and other forms of
27 environmental degradation. Its members use and enjoy California’s rivers and watersheds for
28 recreational, aesthetic, scientific study, and related non-consumptive uses. The interests of NCRA and

1 its members will be adversely affected and injured by the Project unless the relief requested herein is
2 granted.

3 11. Petitioner SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION, INC. (“San
4 Francisco Fishermen”) is a century-old association of owners and operators of small, family-owned
5 fishing boats that catch Dungeness crab, wild California King salmon, Pacific herring, and other species
6 that live in and depend upon the cold waters of the Pacific Ocean, and San Francisco Bay-Delta and the
7 Sacramento and San Joaquin Rivers and their tributaries. San Francisco Fishermen is also actively
8 involved in community education and advocacy concerning fisheries resources legislation to ensure that
9 the rich heritage of commercial fishing in the Bay Area will survive for future generations. San
10 Francisco Fishermen and its members will be harmed by the Project because it would threaten their
11 continued historic use and enjoyment of the fisheries resources of the Delta and its tributary and
12 connected ecosystems.

13 12. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CalSPA”) is a
14 non-profit corporation organized under the laws of the State of California. CalSPA has thousands of
15 members who reside and recreate throughout California. CalSPA’s members are citizens who, in
16 addition to being duly licensed sport fishing anglers, are interested in the preservation and enhancement
17 of California’s public trust fishery resources and vigorous enforcement of California’s environmental
18 laws. CalSPA members have been involved for decades in public education and advocacy efforts to
19 protect and restore the public trust resources of California’s rivers. CalSPA members use California’s
20 rivers and the Delta for recreation, scientific study and aesthetic enjoyment. The interests of CalSPA and
21 its members will be adversely affected and injured by the Project unless the relief requested herein is
22 granted.

23 13. Petitioner PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS
24 (“PCFFA”) is a nonprofit membership organization incorporated in 1976 with headquarters located in
25 San Francisco, California. PCFFA comprises more than 14 separate commercial fishing and vessel
26 owners’ associations situated along the West Coast of the United States. By virtue of its combined
27 membership of approximately 750 fishermen and women, PCFFA is the single largest commercial
28 fishing advocacy organization on the West Coast. PCFFA represents the majority of California’s

1 organized commercial salmon fishermen and has been an active advocate for the protection of Pacific
2 salmon and their spawning, rearing and migratory habitat for more than 30 years. PCFFA and its
3 members would be harmed by the proposed Project unless the relief requested herein is granted.

4 14. Petitioner INSTITUTE FOR FISHERIES RESOURCES (“IFR”) is a non-profit, tax-exempt
5 organization that works to protect and restore salmon and other fish populations and the human
6 economies that depend on them. IFR maintains its principal place of business in San Francisco,
7 California. IFR both funds and manages many fish habitat protection programs and initiatives. In that
8 capacity, IFR advocates for reforms to protect fish health and habitat throughout the West Coast of the
9 United States and has successfully advocated for dam removals, improved pesticide controls, better
10 forestry stream protection standards, reduced discharge of pollutants, and enhanced marine and
11 watershed conservation regulations throughout the West Coast. IFR has worked tirelessly for years to
12 restore and enhance the Delta and its beleaguered fish and wildlife. IFR and its members will be directly
13 and indirectly injured by the Project unless the relief requested herein is granted..

14 15. Defendant SAN LUIS & DELTA-MENDOTA WATER AUTHORITY (“the Authority”)
15 serves 29 member agencies reliant upon water exported from the Bay-Delta by the Bureau of
16 Reclamation’s (“Reclamation’s”) Central Valley Project. The members of the Authority deliver water to
17 approximately 1.1 million acres of farmland and nearly 2 million California residents. The Authority, in
18 association with Reclamation, operates the Grassland Bypass Project. The Authority is also the lead
19 agency under CEQA for the Project and its Addendum to the 2009 EIS/EIR for the GBP Use Agreement.

20 16. The true names and capacities of respondents DOES 1-100, inclusive, are unknown to
21 petitioners who therefore sue such respondents by fictitious names pursuant to CCP section 474.
22 Petitioners are informed and believe, and based on such information and belief allege, that the
23 fictitiously named respondents are state or local officials or agencies who are responsible, in whole or in
24 part, for the approval and implementation of the Project. Petitioners will, with leave of Court if
25 necessary, amend this Verified Petition if and when the true names and capacities of said DOE
26 respondents have been ascertained.

27 17. Real party in interest the UNITED STATES BUREAU OF RECLAMATION
28 (“Reclamation”) is being sued in his official capacity. Reclamation is the federal agency within the

1 United States Department of the Interior charged with managing the Central Valley Project.
2 Reclamation, in association with the Authority, operates the Grassland Bypass Project.

3 18. The true names and capacities of real parties in interest DOES 101-200, inclusive, are
4 unknown to petitioners who therefore sue such respondents by fictitious names pursuant to CCP section
5 474. Petitioners are informed and believe, and based on such information and belief allege, that the
6 fictitiously named real parties in interest are state or local officials or agencies who are responsible, in
7 whole or in part, for the approval and implementation of the Project. Petitioners will, with leave of
8 Court if necessary, amend this Verified Petition if and when the true names and capacities of said Doe
9 respondents have been ascertained.

10 GENERAL ALLEGATIONS

11 19. Petitioners have authorized their attorneys to file this lawsuit on their behalf to vindicate
12 their substantial beneficial interest in securing the Authority's compliance with the law.

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

16 21. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law within
17 the meaning of CCP section 1086 in that, unless this Court issues its writ of mandate setting aside the
18 Authority's approval of the Project, and ordering it to comply with the laws whose violation is alleged
19 herein, the environmental interests of petitioners and the public that are protected by those laws will be
20 substantially and irreparably harmed. No monetary damages or other legal remedy could adequately
21 compensate petitioners for the harm to their beneficial interests, and to the environment, occasioned by
22 the Authority's unlawful conduct.

23 22. Petitioners are entitled to declaratory relief under CCP section 1060 because an actual
24 controversy exists between petitioners and the Authority. Petitioners contend that the Authority has
25 acted in violation of applicable laws and must therefore vacate and set aside its approval of the Project.
26 Petitioners are informed and believe that the Authority disputes this contention. A judicial resolution of
27 this controversy is therefore necessary and appropriate.

28 23. Petitioners are also entitled to injunctive relief under CCP section 526 because the

1 Authority’s approval of the Project threatens irreparable environmental harm. Unless enjoined, the
2 Authority will implement the Project despite its lack of compliance with applicable laws, causing undue
3 and unnecessary environmental degradation. Petitioners would thereby suffer irreparable harm due to
4 the Authority’s failure to take the required steps to adequately protect the environment. Injunctive relief
5 is thus warranted under CCP section 525 *et seq.* and PRC section 21168.9 to prevent irreparable harm to
6 the environment.

7 LEGAL BACKGROUND

8 CEQA

9 24. CEQA is California’s primary statutory mandate for environmental protection. It applies to
10 all state and local agencies, and requires them to “first identify the [significant] environmental effects of
11 projects, and then to mitigate those adverse effects through the imposition of feasible mitigation
12 measures or through the selection of feasible alternatives.” *Sierra Club v. State Board of Forestry*
13 (1994) 7 Cal.4th 1215, 1233. Its most important substantive imperative requires “public agencies to
14 deny approval of a project with significant adverse effects when feasible alternatives or feasible
15 mitigation measures can substantially lessen such effects.” *Sierra Club v. Gilroy City Council* (1990)
16 222 Cal.App.3d 30, 41.

17 25. CEQA’s mandate for detailed environmental review “ensures that members of the
18 [governmental decision-making body] will fully consider the information necessary to render decisions
19 that intelligently take into account the environmental consequences” of their proposed action. *Mountain*
20 *Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 133; PRC §§ 21080.5(d)(2)(D),
21 21091(d)(2); 14 C.C.R. [CEQA Guidelines] (“Guidelines”) § 15088. The CEQA process thus “protects
22 not only the environment but also informed self-government.” *Citizens of Goleta Valley v. Board of*
23 *Supervisors* (1990) 52 Cal.3d 553, 564.

24 26. California “public agencies” must comply with CEQA when they approve discretionary
25 projects. PRC § 21080(a).

26 27. The Authority is a “public agency” and a “state agency” as defined in CEQA. PRC §
27 21063.

28 28. When an EIR has been prepared for a project, CEQA Guidelines section 15162 directs that a

1 Subsequent Environmental Impact Report (“SEIR”) be prepared where “[s]ubstantial changes are
2 proposed in the project,” “[s]ubstantial changes occur with respect to the circumstances under which the
3 project is undertaken,” or “[n]ew information of substantial importance” shows a change in the project’s
4 effects, mitigation measures, or alternatives, such that new significant environmental effects or a
5 substantial increase in the severity of previously identified significant effects, are now shown.

6 29. An addendum to an EIR is only allowed where changes are necessary but *none* of the
7 conditions requiring preparation of an SEIR are met. Guidelines § 15164(a). If there are any “new
8 significant environmental effects or a substantial increase in the severity of previously identified
9 significant effects,” an SEIR— rather than an addendum – must be prepared. Guidelines §§ 15162(a),
10 15164(a). Similarly, if there are mitigation measures or alternatives “previously found not to be feasible
11 [that] would in fact be feasible” or that are “considerably different . . . [and] would substantially reduce
12 one or more significant effects,” an SEIR must be prepared. *Id.*

13 **The Sacramento-San Joaquin Delta Reform Act**

14 30. To address the indisputably perilous state of the Delta, in 2009 the California Legislature
15 enacted the Sacramento-San Joaquin Delta Reform Act, Water Code section 85000 et seq. (“Delta
16 Reform Act”), declaring that “[t]he Sacramento-San Joaquin Delta watershed and California’s water
17 infrastructure are in crisis and *existing Delta policies are not sustainable.*” Water Code § 85001(a),
18 emphasis added. The Legislature found that “‘the Delta’ . . . is a critically important natural resource for
19 California and the nation. It serves Californians concurrently as both the hub of the California water
20 system and the most valuable estuary and wetland ecosystem on the west coast of North and South
21 America.” Water Code § 85002. “Resolving the crisis requires *fundamental reorganization* of the
22 state’s management of Delta watershed resources.” Water Code § 85001(a), emphasis added.

23 31. The Delta Reform Act was enacted to advance the “coequal goals” of restoring the Delta
24 ecosystem and ensuring water supply reliability.” Water Code § 85054. To this end, the Act requires
25 adoption of a legally enforceable Delta Plan by the Delta Stewardship Council to achieve these coequal
26 goals. It also requires any state agency “that proposes to undertake a covered action” to “prepare a
27 written certification of consistency with detailed findings as to whether the covered action is consistent
28 with the Delta Plan,” and submit the written findings to the Delta Stewardship Council. Water Code §

1 85225. It defines “[c]overed action” as a “plan, program, or project” as defined by Public Resources
2 Code section 21065, that:

3 (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

4 (2) Will be carried out, approved, or funded by the state or a local public agency.

5 (3) Is covered by one or more provisions of the Delta Plan.

6 (4) Will have a significant impact on achievement of one or both of the coequal
7 goals Water Code § 85057.5(a).

8 **The Public Trust Doctrine**

9 32. Water Code section 85023 states, “the longstanding constitutional principle of reasonable
10 use and the public trust doctrine shall be the foundation of state water management policy and are
11 particularly important and applicable to the Delta.”

12 33. In *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, the
13 court noted that the Public Trust Doctrine mandates “that the state as trustee of the public trust retains
14 supervisory control over the state's waters such that no party has a vested right to appropriate water in a
15 manner harmful to the interests protected by the public trust.” *Id.* at 149, citing *National Audubon*
16 *Society v. Superior Court* (1983) 33 Cal.3d 419, 445. The court held that the Public Trust Doctrine
17 necessarily requires agencies to “consider water quality for the protection of beneficial uses” when
18 determining whether or not to approve a project. *Id.* at 150-151.

19 34. “Public trust easements are traditionally defined in terms of navigation, commerce and
20 fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and
21 general recreation purposes the navigable waters of the state, and to use the bottom of the navigable
22 waters for anchoring, standing, or other purposes.” *Marks v. Whitney* (1971) 6 Cal.3d 251, 259. For
23 nearly 50 years it has been settled law in California that public trust values also “encompass[] . . . the
24 preservation of those lands in their natural state, so that they may serve as ecological units for scientific
25 study, as open space, and as environments which provide food and habitat for birds and marine life, and
26 which favorably affect the scenery and climate of the area.”

27 35. Although compliance with CEQA “may assist an agency in complying with its duties under
28 the public trust doctrine [.] CEQA review of a project does not necessarily or automatically satisfy

1 the agency’s affirmative duties to take the trust into account and protect public trust uses whenever
2 feasible.” *San Francisco Baykeeper Inc. v. State Lands Com.* (“*Baykeeper IP*”) (2018) 29 Cal.App.5th
3 562, 571. “[A] public trust use is not any use that may confer a public benefit, but rather a use that
4 facilitates public access, public enjoyment, or public use of trust land.” *Id.* at 570. Consequently, uses
5 of public trust resources for commercial purposes that do not facilitate public enjoyment of the resource
6 are not public trust uses protected by the public trust doctrine. *San Francisco Baykeeper, Inc. v. State*
7 *Lands Com.* (“*Baykeeper I*”) (2015) 242 Cal.App.4th 202, 235-238. In deciding whether an activity
8 impermissibly harms the public trust resource, “the determinative fact is the impact of the activity on the
9 public trust resource.” *Environmental Law Foundation v. State Water Resources Control Board* (2018)
10 26 Cal.App.5th 844, 859.

11 12 FACTUAL BACKGROUND

13
14 36. The Grassland Bypass Project (“GBP”), which began in 1996, is a misguided attempt to
15 reduce the load of selenium and other pollutants discharged from the Grassland Drainage Area (“GDA”)
16 into wetlands and refuges by diverting those discharges through the San Joaquin River Water Quality
17 Improvement Project (“SJ RIP”) to the Grassland Bypass Channel and the San Luis Drain (“Drain”), and
18 subsequently discharging the polluted waste stream into Mud Slough, a water of the United States.

19 37. For decades now, Reclamation and the Authority (collectively, the “Operators”) have been
20 discharging water laden with pollutants harmful to human health and to the fragile ecosystems of Mud
21 Slough, the San Joaquin River, and the Bay-Delta. The original GBP was permitted for just 5 years, as a
22 short-term, stop-gap project. However, with extensions, it has now operated for 23 years – long past the
23 time by which it was to be shuttered.

24 38. After preparation of a Final Environmental Impact Statement / Final Environmental Impact
25 Report, the Operators signed a Use Agreement in 2001 allowing GBP operation from September 28,
26 2001 through December 31, 2009, when it was to be terminated.

27 39. However, the GBP was not closed in 2009. Instead, that year the Operators prepared a Final
28 Environmental Impact Statement / Final Environmental Impact Report (“2009 EIS/EIR”) and in 2010

1 approved the current Use Agreement (2010 Use Agreement) allowing the continuation of the GBP from
2 2010 through December 31, 2019.

3 40. The ongoing discharges of pollutants from the GBP violate the Clean Water Act. Under
4 sections 301 and 402 of the CWA, an NPDES permit is required for those discharges. 33 U.S.C. §§
5 1311, 1342. California’s Porter-Cologne Water Quality Control Act requires compliance with the CWA.
6 Water Code § 13377. In 1996, the Operators obtained an NPDES permit for the discharge of
7 groundwater from the Project. But in September 1996, that NPDES permit was rescinded.
8 Consequently, the current discharges are not authorized by any NPDES permit. Nonetheless, the
9 Authority approved the Project knowing that it collects polluted groundwater and discharges it into the
10 San Luis Drain, Mud Slough, and eventually into the San Joaquin River and the Bay-Delta without an
11 NPDES permit. The Authority’s approval of the Project therefore violates the Clean Water Act.

12 41. On September 6, 2019 the Ninth Circuit Court of Appeals confirmed that “Congress
13 intended for discharges that include return flows from activities unrelated to crop production to be
14 excluded from the statutory exception, thus requiring an NPDES permit for such discharges.” *PCFFA v.*
15 *Glaser*, 937 F.3d 1191, 1199 (9th Cir. 2019). The wastewaters discharged by the GBP through the San
16 Luis Drain are commingled and include contaminated water from land that is neither irrigated nor
17 farmed. Therefore, under this ruling, an NPDES permit is required for operation of the Drain. *Id.*

18 42. By approving an extension of the GBP Use Agreement allowing the continued discharge of
19 pollutants from the Drain into waters of the United States without the required NPDES permit, the
20 Authority is violating the CWA. The Authority’s attempted end-run around the CWA – by claiming the
21 Drain is exempt from the NPDES permit requirement – was forcefully rejected by the Ninth Circuit in
22 *PCFFA v. Glaser*. 937 F.3d at 1199-1201.

23 43. The Authority’s violation of the CWA is causing significant environmental harm.
24 Discharges by the GBP contain high levels of selenium. Selenium kills juvenile salmon and steelhead
25 and causes birth defects in the birds that nest and feed along the shorelines and in the wetlands affected
26 by the Project. According to recent monitoring reports, selenium levels in the San Joaquin River exceed
27 safe drinking water standards. Selenium pollution from the Drain is present throughout the Bay-Delta, a
28 vital estuarine system which, through the Central Valley Project and the State Water Project, serves as

1 the water supply for 20 million Californians.

2 44. Despite this serious pollution impact, the Operators have extended the operational life of the
3 GBP for *an additional 25 years*, until 2045, without first securing the NPDES permit that is required,
4 and remedying the pollution that the CWA prohibits.

5 45. Petitioners exhausted their administrative remedies by timely submitting detailed
6 comments objecting to the Project and its Addendum on September 13, 2019. Petitioners pointed out in
7 their comments that the Authority must comply with the CWA's requirement for an NPDES permit,
8 prepare an SEIR for the Project, comply with the Delta Reform Act, and protect public trust resources,
9 among other objections.

10 46. Despite these objections by Petitioners and others, on October 10, 2019 the Authority issued
11 a Notice of Determination ("NOD") certifying its Final Addendum and Initial Study and approving the
12 Project. The NOD was posted by the Governor's Office of Planning and Research on October 11, 2019.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of CEQA)**

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

16 47. The paragraphs set forth above and below are realleged and incorporated herein by
17 reference.

18 48. Petitioners bring this First Cause of Action for violations of CEQA pursuant to PRC
19 sections 21168 and 21168.5, on the grounds that the Authority committed a prejudicial abuse of
20 discretion by failing to proceed in the manner required by law in approving a deeply flawed Project
21 based on a legally inadequate Addendum.

22 49. The purpose of an addendum is to provide agencies and the public with information about
23 changes to a proposed project that will cause any "new significant environmental effects or a substantial
24 increase in the severity of previously identified significant effects," or result in changes to the feasibility
25 of any mitigation measures or alternatives, whether or not they were previously considered. Guidelines
26 §§ 15162(a), 15164(a). An addendum is not appropriate where, as here, "[s]ubstantial changes are
27 proposed in the project," "[s]ubstantial changes occur with respect to the circumstances under which the
28 project is undertaken," or "[n]ew information of substantial importance" shows a change in the project's

1 effects, mitigation measures, or alternatives such that new significant environmental effects or a
2 substantial increase in the severity of previously identified significant effects are now shown. Guidelines
3 § 15162(a).

4 50. The Addendum purports to assess the impacts of the Authority’s proposed Long-Term
5 Storm Water Management Program (“Storm Water Program”). The Storm Water Program would add
6 approximately 200 acres of “storage basins,” expand the Project’s reuse area and otherwise modify the
7 operation of the Project. These changes will have significant impacts not previously analyzed, and
8 therefore require preparation of an SEIR.

9 51. There is a second reason an SEIR is required. There have been numerous changes in the
10 circumstances surrounding the Project, as the Authority admits. Addendum Appendix A 19. These
11 changes, along with the changes to the Project itself, have significant impacts not previously analyzed
12 that must be studied in an SEIR rather than an addendum.

13 52. There is a third reason an SEIR is required. New information of substantial importance has
14 come to light in the intervening years since the GBP was last approved in 2009, showing changes in the
15 Project’s effects not previously analyzed that require analysis in an SEIR.

16 53. The Authority’s certification of the Addendum instead of an SEIR, and approval of a 25-
17 year extension for the GBP Use Agreement based on the Addendum, violate CEQA. The Addendum is
18 inadequate, and an SEIR was required, for the reasons detailed below.

19 Surface Water, Groundwater, and Soils

20 **a. The Project Requires an NPDES Permit**

21 54. The Authority certified the Addendum and approved a 25-year extension of the GBP Use
22 Permit despite the fact that it is thereby violating the Clean Water Act by discharging polluted flows
23 from the GBP into waters of the United States without the required NPDES permit. This violation of the
24 CWA contravenes CEQA’s requirement that the Authority must disclose whether the Project would
25 “[v]iolate any . . . waste discharge requirements.” Guidelines Appendix G, Environmental Checklist
26 Form, Subdivision X (“HYDROLOGY AND WATER QUALITY”) Question “a.” CEQA requires that
27 this violation be addressed in an SEIR because it raises new information of substantial importance and
28 changes the circumstances surrounding the Project such that significant environmental effects not

1 previously analyzed are shown. Guidelines § 15162(a).

2 **b. Adding 200 Acres of Storage Basins Poses Significant New Impacts**

3 55. The Addendum states that the Storm Water Program’s use of 200 acres of storage basins to
4 collect storm water for subsequent release will not significantly impact water quality. Addendum 3-4 to
5 3-5. The Addendum claims that, by impounding storm flows, and metering their release onto the reuse
6 area, contaminated discharges would be avoided or reduced to insignificance. *Id.* This assertion is based
7 on the assumption that storm water that would be collected in these storage basins from December to
8 May would not discharge pollutants such as selenium, boron, salt, and molybdenum to Mud Slough and
9 thence the San Joaquin River. Addendum 3-3. That premise is false. As the Authority admits, the
10 storage basins are unlined and will allow seepage of their contaminated water to the underlying and
11 surrounding groundwater. Addendum Appendix A 10. Furthermore, foreseeable weather conditions and
12 constraints on the SJRIP’s efficacy and operational capacity may result in the discharge of untreated
13 water to the storage basins on the SJRIP, as further discussed below. The potential impacts of those
14 discharges must be analyzed in an SEIR.

15 **c. Shutting Down Sump Pumps During Wet Weather Creates Significant New Impacts**

16 56. In an attempt to reduce the volume of contaminated groundwater in its discharges, the
17 Storm Water Program calls for wastewater sump pumps to be turned off “prior to and during wet
18 weather flows.” *Id.* But as the impounded storm water collects in these storage basins, it will add to the
19 contaminants in the already impaired groundwater and soils underlying and surrounding the basins,
20 exacerbating their contamination. Addendum Appendix A 10. Consequently, the impounded
21 wastewater will simply create additional saturated soils, ponds of contaminated water, and polluted run-
22 off, all of which will continue to enter the Drain by gravity flow and seepage, and ultimately discharge
23 into Mud Slough.

24 **d. Relocating Contaminated Sediment Did Not Eliminate the Problem**

25 57. The Authority claims it has removed from the Drain approximately 180,000 cubic yards –
26 so far – of contaminated sediment. But the question remains whether this contaminated sediment may
27 nonetheless find its way into the groundwater that drains into the San Luis Drain. Much of this
28 contaminated sediment was apparently relocated to old drains, or placed elsewhere in the reuse area. If

1 so, surface runoff and groundwater will continue to infiltrate this contaminated sediment, and remobilize
2 these contaminants – including high levels of selenium and other pollutants – into the water table, and
3 ultimately the San Luis Drain. This potential pathway of recontamination must be disclosed and its
4 impacts and their mitigation must be addressed.

5 **e. Expanding the Reuse Area Does Not Solve the Contamination Problem**

6 58. The Storm Water Program would also expand the size of the reuse area. The Addendum
7 states that the expansion is necessary because the existing reuse area cannot be used to store and treat the
8 seleniferous water without dangerous ponding. Addendum 2-5. In other words, the reuse area is unable
9 to serve the purpose for which it was ostensibly designed. Instead of reevaluating the wisdom of the
10 system in light of its failure, the Authority is doubled-down on the Project by expanding its size. The
11 Authority claims that because the expansion area “represent[s] a 9% increase” over the reuse area
12 permitted in 2009, and that “crops grown and water management will be identical to the existing
13 project,” no further analysis is needed. Addendum Appendix A 11. But this logic is fatally flawed. The
14 SJRIP is broken. It cannot serve the purpose for which it is designed. This broken Project must be
15 replaced with effective treatment, not expanded.

16 **f. The Addendum Relies on Obsolete and Inaccurate Modeling**

17 59. The Authority did not perform any new modeling of the water quality impacts associated
18 with the Storm Water Program, including impacts resulting from the increase in the size of the reuse area
19 or the use of the proposed new storage basins. Addendum 3-11. By relying on out-of-date modeling that
20 does not accurately reflect the Storm Water Program’s impacts, or the changed conditions at the reuse
21 area, the Authority has precluded informed decisionmaking and therefore failed to comply with CEQA.
22 Under CEQA Guidelines section 15162, these new and substantially increased impacts must be
23 thoroughly studied in an SEIR.

24 **Biology**

25 **a. Use of Storage Basins Exposes Waterfowl to Elevated Selenium**

26 60. The changes contemplated in the Addendum will substantially increase the severity of
27 previously identified biological impacts and cause significant new biological impacts that were not
28 considered in the 2009 FEIS/FEIR. For example, the Addendum proposes “to accumulate storm water in

1 the [storage basins in the GDA] as needed to reduce peak flows during high rainfall events . . . for
2 subsequent release of the storm water through the Drain or to the reuse area.” Addendum 2-3. As the
3 Addendum acknowledges, use of storage basins in the GDA has the potential to expose waterfowl to
4 water with elevated selenium levels if the basins cannot promptly be drained. Addendum 2-3. But
5 nothing in the Addendum, 2009 FEIS/FEIR, or the Initial Study indicates that the basins will be
6 promptly drained, or that these impacts will be otherwise mitigated to insignificance. Rather, the
7 Authority ignores the Project’s impacts on the “several avian species . . . observed on the existing reuse
8 area” because the “observed densities of birds” are low.

9 **b. Reliance on the Ineffectual SJRIP Is Unavailing**

10 61. The Addendum claims that “[w]ater in the basins would be distributed to the SJRIP to meet
11 irrigation demand as soon as practical,” but “as soon as practical” does not ensure that the basins will be
12 “promptly drained” to protect wildlife. Addendum 2-3. In fact, the Authority will only deviate from its
13 primary goal of distributing the water “as soon as practical” “[i]n rare cases . . . to prevent evapo-
14 concentration if there is not sufficient reuse capacity to drain the basins.” Addendum 2-3 to 2-4. The
15 only assurance the Addendum provides is that the basins would be emptied by late May. Addendum 2-4.
16 Aside from a late May deadline, the Addendum fails to provide any guidelines or criteria for when the
17 basins will be drained, nor does it even consider what actions and facilities would be needed to promptly
18 drain the basins to protect wildlife.

19 **c. Proposed Mitigations for Irrigation Ditches Are Ineffectual**

20 62. The Addendum and Initial Study argue that mitigation measures designed to limit the
21 impacts of irrigation ditches in the 2009 EIS/EIR will help “avoid impacts to wildlife” from these storage
22 basins, but the effectiveness of the mitigations is doubtful and moreover, they will have their own
23 impacts that must be considered in an SEIR. Addendum 2-3; Initial Study 2-14 to 2-16. The 2009
24 EIS/EIR proposed mitigations to make irrigation ditches less attractive and to haze birds to limit nesting
25 and foraging in those irrigation ditches. Addendum 3-6 to 3-7. The majority of the measures designed
26 to make irrigation ditches less attractive are inapplicable to the storage basins, both because the physical
27 structures are different and because the storage basins already exist, limiting the potential to incorporate
28 mitigations. Addendum Appendix A 9 (admitting that measures are more difficult to incorporate into

1 already existing features). And hazing has significant impacts because it displaces wildlife from its
2 foraging, breeding and nesting habitat. Those impacts must be examined in an SEIR. CEQA Guidelines
3 § 15162(a).

4 //

5 **d. Expansion of the SJRIP Would Increase Ponding of Seleniferous Water**

6 63. The Project includes a 1,450-acre expansion of the existing reuse facility – the SJRIP – to
7 7,550 acres. The 2009 EIS/EIR analyzed a 6,100 acre reuse facility, and the proposed expansion “is an
8 additional 650 acres over the maximum size anticipated in the 2009 Final EIS/EIR.” Addendum 2-5;
9 2009 EIS/EIR 2-2. While the “additional acreage would be managed in the same manner as the existing
10 acreage with the same biological monitoring requirements established by the U.S. Fish and Wildlife
11 Service (USFWS) in their Biological Opinion,” that does not negate the significant new and increased
12 impacts that this substantial change will have on the surrounding environment. Addendum 2-5; CEQA
13 Guidelines § 15162(a). As the Addendum admits, “[t]he primary environmental concern is an increased
14 potential for ponding of seleniferous water within the fields of the SJRIP, which could be an attractive
15 nuisance to wildlife, particularly birds.” Addendum 2-5. This impact requires examination in an SEIR.

16 **e. Ponding in the Past Has Poisoned Birds**

17 64. The Project’s increased ponding will likely poison birds. In “2003, a pasture at the existing
18 reuse area site attracted waterfowl when it was inadvertently flooded. This flooded area created ideal
19 ecological conditions for shorebird foraging and nesting and thus, a number of pairs responded
20 opportunistically and bred in the field.” Addendum 3-7. But as a consequence, “[r]ecurvirostrid [i.e.,
21 birds of the family *recurvirostridae*] eggs collected near the pasture *had highly elevated [selenium]*
22 *concentrations.*” *Id.* (emphasis added). But the Addendum dismisses this concern, claiming that “other
23 impacts would be created if the area is not enlarged to handle agricultural drainage.” Addendum 2-5;
24 Addendum Appendix A 9. But it is a violation of CEQA to ignore a significant impact on the grounds
25 the effects of an alternative might be greater. The deliberate exposure of waterfowl to these poisonous
26 waters is a significant impact that requires analysis in an SEIR. Creating this hazard is also a crime
27 forbidden by the Migratory Bird Treaty Act, 16 U.S.C. section 703. An SEIR is needed both to assess
28 the Project’s impacts on wildlife, and to determine what these “other” undisclosed impacts may be, and

1 thereby allow the public and decisionmakers to weigh them and make an informed decision.

2 **f. Reliance on Ineffective Mitigation Measures from 2009 EIS/EIR**

3 65. The Addendum and Initial Study rely on ineffective mitigation measures from the 2009
4 EIS/EIR in an ill-advised attempt to reduce these new significant and substantially increased impacts.
5 Supposedly, “[m]itigation contained in the Grassland Bypass Project Final EIS/EIR for the existing reuse
6 facility would apply to this area also. This mitigation includes a contingency plan in the event of
7 inadvertent flooding in the reuse area due to breakage of a water supply canal or delivery facility.”
8 Addendum 2-5; Initial Study 1-11. But this one-page so-called contingency “plan” is vague and fails to
9 provide any enforceable guidelines. It recommends that “ponded water . . . be eliminated through the
10 discharge of the water into a tail-water return system *or* by pumping the water into one of the supply
11 channels in the project *or* a tail-water return system” within 24 hours. Initial Study, Appendix D, D-2
12 (emphasis added). But this page never explains why, when or how to utilize any of the options
13 presented. Nor does it enforce the 24-hour ponding elimination requirement. Instead, this page defers
14 mitigation for ponding that occurs for more than 24 hours, stating that “an event-specific monitoring
15 plan will be developed to monitor the impacts on bird species resulting from exposure to ponded water.”
16 Initial Study, Appendix D, D-2. In other words, the “plan” is to make it up as you go. That approach is
17 the exact opposite of the searching examination and public review of a project’s impacts *before project*
18 *approval* that CEQA demands.

19 **g. Reliance on Vague and Unenforceable Mitigation Measures**

20 66. While acknowledging that the SJRIP field will be increased in size, that field flooding has
21 occurred previously, and that the flooded field created “ideal ecological conditions for shorebird foraging
22 and nesting, and thus, a number of pairs responded opportunistically and bred in the [contaminated]
23 field,” the Addendum simultaneously dismisses this concern. Addendum 3-7. Instead, the Authority
24 claims that a vague and unenforceable mitigation measure that was never analyzed with regard to a reuse
25 area of this size is sufficient. But it is not. An SEIR is required to analyze the impacts of the proposed
26 Project. CEQA Guidelines § 15162.

27 67. For the foregoing reasons, the Authority’s Addendum violates CEQA. The Authority must
28 prepare an SEIR to consider the impacts of the proposed Project, including the impacts to surface water,

1 groundwater, soil, and biology.

2
3 **SECOND CAUSE OF ACTION**

4 **(Violation of the Delta Reform Act)**

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

6 68. The paragraphs set forth above and below are realleged and incorporated herein by
7 reference.

8 69. The Delta Reform Act requires any state agency “that proposes to undertake a covered
9 action” to “prepare a written certification of consistency with detailed findings as to whether the covered
10 action is consistent with the Delta Plan,” and submit the written findings to the Delta Stewardship
11 Council. Water Code § 85225. It defines “[c]overed action” as a “plan, program, or project” as defined
12 by Public Resources Code section 21065, that:

13 (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

14 (2) Will be carried out, approved, or funded by the state or a local public agency.

15 (3) Is covered by one or more provisions of the Delta Plan.

16 (4) Will have a significant impact on achievement of one or both of the coequal goals

17 Water Code § 85057.5(a).

18 70. The Delta Reform Act’s coequal goals are “providing a more reliable water supply for
19 California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be
20 achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and
21 agricultural values of the Delta as an evolving place.” Water Code § 85054.

22 71. The Project discharges pollutants to the Delta that harm its fish and wildlife and therefore
23 will have a significant impact on achievement of the Delta Reform Act’s coequal goals.

24 72. The Authority failed to make the consistency determination required by the Delta Reform
25 Act before approving the Project. It could not make this required determination because the Project is
26 not consistent with the Delta Plan or the coequal goals of the Delta Reform Act. The Delta Plan itself
27 acknowledges that the existing 5 µg/L selenium objective for chronic exposure “may not be sufficient”
28 for aquatic organisms and fish. Delta Plan, Chapter 6, p. 228. The Delta Plan recommends that projects

1 maintain water quality “at a level that supports, enhances, and protects” the beneficial uses identified in
2 the Basin Plan. WQ R1. The Project fails to do so.

3 73. As formulated, the Project’s WDRs permit harmful discharges that degrade the quality of
4 the Delta ecosystem, contrary to the Delta Reform Act and the Delta Plan’s requirements that projects
5 restore, protect, and enhance the Delta ecosystem. Water Code §§ 85054, 85066; Delta Plan Chapters 4
6 (Protect, Restore and Enhance the Delta Ecosystem) and 6 (Water Quality).

7 74. For the foregoing reasons, the Project is neither consistent with the Delta Plan nor compliant
8 with the coequal goal of “protecting, restoring, and enhancing the Delta ecosystem.” Water Code §
9 85054. Therefore it violates the Delta Reform Act.

10 **THIRD CAUSE OF ACTION**

11 **(Violation of the Public Trust Doctrine)**

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

13 75. The paragraphs set forth above and below are realleged and incorporated herein by
14 reference.

15 76. Water Code section 85023 states, “the longstanding constitutional principle of reasonable
16 use and the Public Trust Doctrine shall be the foundation of state water management policy and are
17 particularly important and applicable to the Delta.”

18 77. In *United States v. State Water Resources Control Board*, the court noted that the Public
19 Trust Doctrine mandates “that the state as trustee of the public trust retains supervisory control over the
20 state's waters such that no party has a vested right to appropriate water in a manner harmful to the
21 interests protected by the public trust.” *Id.* at 149, citing *National Audubon Society v. Superior Court*,
22 33 Cal.3d at 445. The court held that the public trust doctrine necessarily requires agencies to “consider
23 water quality for the protection of beneficial uses” when determining whether or not to approve a project.
24 *Id.* at 150-151.

25 78. “Public trust easements are traditionally defined in terms of navigation, commerce and
26 fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and
27 general recreation purposes the navigable waters of the state, and to use the bottom of the navigable
28 waters for anchoring, standing, or other purposes.” *Marks v. Whitney*, 6 Cal.3d at 259. For nearly 50

1 years it has been settled law in California that public trust values also “encompass[] . . . the preservation
2 of those lands in their natural state, so that they may serve as ecological units for scientific study, as open
3 space, and as environments which provide food and habitat for birds and marine life, and which
4 favorably affect the scenery and climate of the area.” *Id.* at 259-260.

5 79. The Public Trust Doctrine “imposes an obligation on the state trustee [here, the Authority]
6 ‘to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that
7 right of protection only in rare cases when the abandonment of that right is consistent with the purposes
8 of the trust.’” *Baykeeper II*, 29 Cal.App.5th at 569; *Baykeeper I*, 242 Cal.App.4th at 234; *National*
9 *Audubon*, 33 Cal.3d at 441. The Delta and its tributaries are public trust resources that must be
10 protected. The Public Trust Doctrine “impose[s] an affirmative duty” on the Authority “to take the
11 public trust into account” before authorizing the continued degradation of already imperiled waterways.
12 *Baykeeper II*, 29 Cal.App.5th at 570-571. Although “the state trustee has broad discretion . . . to
13 promote [one public trust use] over other legitimate trust uses,” it does not have discretion to promote
14 *non*-public trust uses over “legitimate trust uses.” *Id.* at 577.

15 80. But the Authority did exactly that here. It approved the discharge of polluted flows – a non-
16 public trust use – over the protection of public trust resources. These flows degrade the waters of Mud
17 Slough, the San Joaquin River, and the Delta, harming the individuals and species that rely on them.

18 81. The Project will harm public trust resources, including habitat necessary for fish and
19 wildlife, and clean water essential for recreation, because the Project directly contributes to the pollution
20 and degradation of Mud Slough, the San Joaquin River, and the Delta. The Project impermissibly
21 promotes a non-public trust use at the expense (indeed, potential extirpation) of the Delta’s imperiled
22 fish and wildlife and other public trust resources.

23 82. By approving the Project without adequately analyzing potential alternatives as required by
24 CEQA and the Public Trust Doctrine, the Authority abdicated its affirmative statutory and constitutional
25 “duties to take the trust into account and protect public trust uses whenever feasible,” and impermissibly
26 promoted a non-public trust use at the expense of public trust resources. *Baykeeper II*, 29 Cal.App.5th at
27 571, 577.

28 83. For the foregoing reasons, the Authority’s approval of the Project violates the Public Trust

1 Doctrine.

2 **FOURTH CAUSE OF ACTION**

3 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**

4 **Project Approvals as Contrary to CCP §§ 1085 and 1094.5)**

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

6 84. The paragraphs set forth above and below are realleged and incorporated herein by
7 reference.

8 85. The Authority proceeded in excess of its jurisdiction and abused its discretion in purporting
9 to approve the Project and certify the Addendum thereon, because such approvals violate CCP sections
10 1085 and 1094.5 in the following respects, among others:

- 11 a. such approvals were not granted in accordance with the procedures required by law;
- 12 b. such approvals were not based on the findings required by law; and
- 13 c. such approvals were not based on, or were contrary to, the evidence in the record
14 before the Authority.

15 86. The Authority failed to proceed in the manner required by law in the following respects,
16 among others:

- 17 a. The Authority violated CEQA as alleged hereinabove;
- 18 b. The Authority violated the Delta Reform Act as alleged hereinabove; and
- 19 c. The Authority violated the Public Trust Doctrine as alleged hereinabove.
- 20 d. The Authority violated the Clean Water Act and the Porter-Cologne Water Quality
21 Control Act by not securing the NPDES permit they require as alleged hereinabove.

22 87. The Authority's actions in approving the Project without complying with the procedures
23 required by CCP sections 1085 and 1094.5 exceeded the Authority's jurisdiction and constitute a
24 prejudicial abuse of discretion, and therefore are invalid and must be set aside.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, petitioners pray for relief as follows:

- 27 1. For interlocutory and permanent injunctive relief restraining the Authority from taking any
28 action to carry out the Project pending, and following, the hearing of this matter;

1 2. For a peremptory writ of mandate directing the Authority to set aside and vacate its approval
2 of the Project, and certification of its Addendum;

3 3. For declaratory relief declaring the Project and its Addendum to be unlawful;

4 4. For a peremptory writ of mandate directing the Authority to suspend all activity
5 implementing the Project that could result in any change or alteration in the physical environment until it
6 has taken all actions necessary to bring its approval of the Project and its Addendum into compliance
7 with CEQA, the Delta Reform Act, the Public Trust Doctrine, the Code of Civil Procedure, the Clean
8 Water Act and the Porter-Cologne Water Quality Act.

9 5. For attorneys' fees under Code of Civil Procedure section 1021.5;

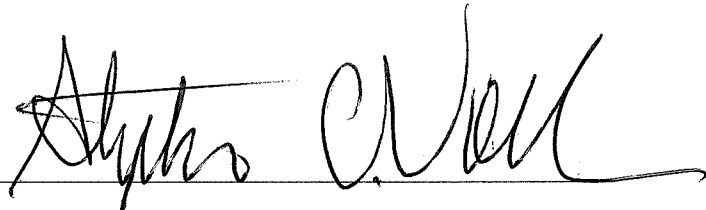
10 6. For costs incurred in this action; and

11 7. For such other equitable or legal relief as the Court may deem just and proper.

12
13
14
15 Dated: November 12, 2019

Respectfully submitted,

16 LAW OFFICES OF STEPHAN C. VOLKER

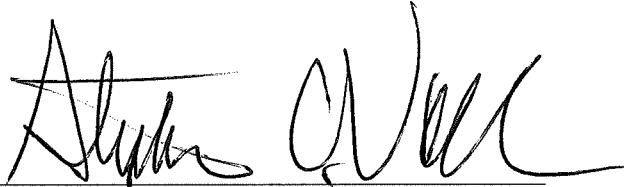
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19 

20 By: STEPHAN C. VOLKER
21 Attorney for Petitioners and Plaintiffs
22 NORTH COAST RIVERS ALLIANCE, SAN FRANCISCO
23 CRAB BOAT OWNERS ASSOCIATION, CALIFORNIA
24 SPORTFISHING PROTECTION ALLIANCE, PACIFIC
25 COAST FEDERATION OF FISHERMEN'S
26 ASSOCIATIONS, and INSTITUTE FOR FISHERIES
27 RESOURCES
28

VERIFICATION

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed in Berkeley, California on November 12, 2019.


STEPHAN C. VOLKER