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IN THE SUPERIOR COURT OF CALIFORNIA
ALAMEDA COUNTY

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE; CALIFORNIA WATER IMPACT NETWORK; AQUALLIANCE, Plaintiffs, v. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, and THOMAS HOWARD, in his official capacity as State Water Resources Control Board Executive Director, Defendants, CALIFORNIA DEPARTMENT OF WATER RESOURCES, UNITED STATES BUREAU OF RECLAMATION, Real Parties in Interest.	Case No. RG 15780498 FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (Cal. Code Civ. Proc. §§ 526, 1060; Federal Clean Water Act, 33 U.S.C. § 1251 et seq.; Federal Supremacy Clause, United States Constitution, art. 6, cl. 2; Public Trust Doctrine) Assigned for All Purposes to: Hon. Evelio Grillo, Dept. 14

Plaintiffs California Sportfishing Protection Alliance, California Water Impact Network, and AquAlliance (collectively "Plaintiffs") hereby allege as follows:

INTRODUCTION

1. Plaintiffs seek declaratory and injunctive relief invalidating the State Water Resources Control Board's ("SWRCB"), and its Executive Director's, pattern and practice policy of relaxing water quality protection standards adopted pursuant to federal law, and incorporated into water rights licenses and permits held by the U.S. Bureau of Reclamation ("Bureau") and the California Department of Water Resources ("DWR"), respectively, in violation of the Federal Water Pollution Control Act ("CWA"), 33. U.S.C. § 1251 et. seq, and is implementing regulations, the Supremacy Clause of the United States Constitution, Article 6, Clause 2, and the Public Trust Doctrine.

2. The SWRCB and its Executive Director have issued a series of Orders granting in part and denying in part Temporary Urgency Change Petitions ("TUCPs") submitted by the Bureau and DWR, including but not limited to, on August 4, 2015, July 3, 2015, April 6, 2015, March 5, 2015, February 3, 2015, October 7, 2014, May 2, 2014, April 18, 2014, April 9, 2014, March 18, 2014, February 28, 2014, February 7, 2014, January 31, 2014 ("TUC Orders").

3. The SWRCB and its Executive Director have also engaged in a pattern and practice of waiving temperature requirements for the Sacramento River.

4. Plaintiffs seek this declaratory and injunctive relief to prevent the demise of threatened, endangered, and critically imperiled aquatic species, including but not limited to striped bass, Delta smelt, longfin smelt, American shad, splittail and threadfin shad, Sacramento winter-run Chinook salmon and spring-run Chinook, each of which faces imminent jeopardy of extinction as a direct result of the approval of the TUC Orders, the SWRCB's pattern and practice of weakening water quality standards adopted for the benefit of these species, and the SWRCB's pattern and practice of abrogating its Public Trust duties to conserve these trust resources.

PARTIES

5. CALIFORNIA SPORTFISHING PROTECTION ALLIANCE ("CSPA") is a California non-profit public benefit organization with its principal place of business in Stockton,

California. CSPA's organizational purpose is the protection, preservation, and enhancement of fisheries and associated aquatic and riparian ecosystems of California's waterways, including Central Valley rivers leading into the Bay-Delta. This mission is implemented through active participation in water rights and water quality processes, education and organization of the fishing community, restoration efforts, and vigorous enforcement of environmental laws enacted to protect fisheries, habitat and water quality. Members of CSPA reside along the Central Valley watershed and in the Bay-Delta where they view, enjoy, and routinely use the Delta ecosystem for boating, fishing, and wildlife viewing. CSPA's members derive significant and ongoing use and enjoyment from the aesthetic, recreational, and conservation benefits of the Bay-Delta ecosystem. CSPA and its members have been involved in the administrative proceedings that have been provided to date for the TUC Orders, and temperature standard modifications, including attending meetings and providing written and oral comments.

6. CALIFORNIA WATER IMPACT NETWORK ("C-WIN") is a California non-profit public benefit organization with its principal place of business in Santa Barbara, California. C-WIN's organization purpose is the protection and restoration of fish and wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural environmental resources and uses of the rivers and streams of California, including the Bay-Delta, its watershed and its underlying groundwater resources. C-WIN has members who reside in, use, and enjoy the Bay-Delta and inhabit and use its watershed. They use the rivers of the Central Valley and the Bay-Delta for nature study, recreation, and aesthetic enjoyment. C-WIN and its members have been involved in the administrative proceedings that have been provided to date for the TUC Orders, and temperature standard modifications, including attending meetings and providing written and oral comments.

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

conservation activities in and around the Bay-Delta estuary and its tributary vernal pools, creeks, and rivers. AquAlliance and its members have been involved in the administrative proceedings that have been provided to date for the TUC Orders, and temperature standard modifications, including attending meetings and providing written and oral comments.

8. Defendant CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("SWRCB") is a state agency created under the laws and regulations of the State of California to regulate water quality within the State of California. Defendant Thomas Howard is the Executive Director of the SWRCB. Mr. Howard, in his capacity as Executive Director is the official that issued the TUC Orders. The Executive Director, among other duties, is responsible for reviewing and approving TUCPs, and requested temperature standard modifications, and temperature management plans. When requested, the SWRCB has authority to review and approve or disapprove, in whole or in part, these decisions of the Executive Director.

9. Real Party in Interest CALIFORNIA DEPARTMENT OF WATER RESOURCES ("DWR") is a state agency created under the laws and regulations of the State of California. DWR operates the State Water Project in tandem with the federal Central Valley Project and jointly requested, with the Bureau, the TUC Orders, temperature standard modifications, and temperature management plans, giving rise to the SWRCB's illegal pattern and practice policies in this action.

10. Real Party in Interest UNITED STATE Bureau OF RECLAMATION ("Bureau") is a subdivision of the Department of the Interior, an agency of the United States of America, operates the federal Central Valley Project, and jointly requested, with DWR, the TUC Orders, temperature standard modifications, and temperature management plans, giving rise to the SWRCB's illegal pattern and practice policies in this action.

11. The true names and capacities, whether individual, corporate, associate, coconspirator, partner or alter-ego of those Defendants sued herein under the fictitious names of DOES 1 through 100, inclusive, are not known to Plaintiffs, who therefore sue those Defendants by such fictitious names. Plaintiffs will ask leave of court to amend this Complaint and insert the true names and capacities of these defendants and respondents when the same have been ascertained. Plaintiffs are informed and believe and on that basis allege, that each of the

Defendants designated herein as a DOE defendant and respondent is legally responsible in some manner for the events and happenings alleged in this Complaint, and that Plaintiffs' alleged injuries were proximately caused by the defendants' conduct.

12. The true names and capacities, whether individual, corporate, associate, coconspirator, partner or alter-ego of those Real Parties in Interest sued herein under the fictitious names of DOES 101 through 200, inclusive, are not known to Plaintiffs, who therefore name those Real Parties in Interest by such fictitious names. Plaintiffs will ask leave of court to amend this Complaint and insert the true names and capacities of these Real Parties in Interest when the same -have been ascertained.

LEGAL FRAMEWORK

THE FEDERAL CLEAN WATER ACT

13. The Clean Water Act ("CWA") was established to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a).

14. The CWA requires adoption of water quality standards that "shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." CWA § 303(c)(2)(A).

15. State water quality standards are subject to EPA review and approval.

16. In order to approve a state's water quality criteria, EPA must determine that the state has adopted ''water quality criteria sufficient to protect the designated uses.'' 40 CFR 131.6(c).

17. "For waters with multiple use designations, the criteria shall support the most sensitive use." 40 CFR 131.11(a)(1).

18. The EPA regulations add that: "[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use." 40 CFR § 131.11.

19. Existing designated uses may not be eliminated. 40 CFR §§ 131.10(g), (h)(1).

20. State water quality standards must also include an antidegradation policy.

21. Federal regulations provide that, at a minimum, a state's antidegradation policy must maintain ''[e]xisting instream water uses [those existing in the waterbody at any time on or after November 28, 1975] and the level of water quality necessary to protect the existing uses.'' 40 CFR 131.12(a)(1).

22. The federal CWA preempts state regulation of water quality in waters of the United States.

23. CWA § 510 provides that, "if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation or other limitation, effluent standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter."

24. The Supremacy Clause of the United States Constitution, Art. VI, cl. 2, invalidates state laws that interfere with, or are contrary to, federal law. *See also City of Burbank v. State Water Resources Control Bd*., 35 Cal.4th 613, 626, 108 P.3d 862 (2005).

25. In 1995, the United States Environmental Protection Agency ("U.S. EPA") adopted regulations establishing water quality criteria to protect the designated uses for the surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California (Bay/Delta)(60 FR 4664, January 24, 1995). These criteria consist of estuarine habitat criteria (consisting of a salinity requirement measured at three different locations in Suisun Bay for a specified number of days during the critical spring months), fish migration criteria (consisting of an indexed value representing successful fish migration on the Sacramento River and the San Joaquin River), fish spawning criteria on the lower San Joaquin River (consisting of a salinity requirement measured at various points in April and May), and narrative criteria protecting the brackish tidal marshes in Suisun Marsh. 40 CFR 131.37.

26. U.S. EPA possesses the responsibility and authority to protect the designated uses of a waterbody regardless of whether a source of degradation to said water comes from point sources or nonpoint sources.

27. The United States Supreme Court has held that the CWA allows for minimum stream flow requirements to protect water quality standards, even where said requirement may have an incidental effect upon water supply. *P.U.D. No. 1 of Jefferson City, and City of Tacoma v. Washington Dept. of Ecology*, 511 U.S. 700, 704 (1994).

28. In 1995, U.S. EPA proposed to remove the 40 CFR 131.37 water quality criteria, finding that, subsequent to their promulgation (and as discussed, below), the State of California adopted water quality standards for the Bay/Delta, which were approved by EPA as protective of the designated uses for the relevant waterbodies, and which were thereafter implemented through a state water rights hearing process.

29. Accordingly, EPA has taken the position that the State's Bay-Delta Plan and D-1641 standards are required by, and are sufficient to meet and constitute, CWA standards.

30. Nevertheless, the 40 CFR 131.37 remain in place, and as such, are enforceable under the CWA.

THE BAY-DELTA WATER QUALITY CONTROL PLAN AND D-1641

31. In 1995, and as subsequently revised through 2006, the SWRCB adopted the "Water Quality Control Plan for the San Francisco Bay-San Joaquin Delta Estuary" ("Bay-Delta Plan").

32. The Bay-Delta Plan consists of: (1) beneficial uses to be protected; (2) water quality objectives for the reasonable protection of beneficial uses; and (3) a program of implementation for achieving the water quality objectives.

33. The Bay-Delta Plan establishes water quality objectives for which implementation can be fully accomplished only if the State Water Board assigns some measure of responsibility to water right holders and water users to mitigate for the effects on the designated beneficial uses of their diversions and use of water.

34. Among other requirements to satisfy the CWA, the Basin Plan must include a statement of existing and potential beneficial uses to be protected and water quality objectives that protect beneficial uses.

35. Many beneficial uses relate to fish species and habitat. For example, the Central Valley Water Quality Control Plan (which covers the Sacramento River and San Joaquin River Basins), includes "Rare, Threatened, or Endangered Species," "Estuarine Habitat," "Cold Freshwater Habitat" and many others.

36. The Bay-Delta Plan, which covers the Bay-Delta Estuary and is adopted by the State Water Board rather than the region, includes such uses as "cold freshwater habitat," "spawning, reproduction, and/or early development," "rare, threatened, or endangered species," and other uses related to aquatic health.

37. In California, federal designated uses are equivalent to state law ''beneficial uses'' and federal criteria are equivalent to state law ''water quality objectives.''

38. Thus, the water quality objectives and beneficial use designations adopted under the California Water Code serve as water quality standards for purposes of section 303 of the CWA.

39. In approving the 1995 Bay-Delta Plan, U.S. EPA expressly rested upon this interpretation, treating the 1995 Bay/Delta Plan's "beneficial uses" and "objectives" as "designated uses" and "criteria," respectively, for all purposes under the CWA.

40. As noted, above, water rights and water quality actions can often overlap. Indeed, the U.S. Supreme Court embraced this integration, stating that the distinction between water quality and quantity under the CWA is "artificial." *PUD No. 1, supra*, at 719. "In many cases, water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, be it for drinking water, recreation, navigation or, as here, as a fishery." *Id.*

41. California has recognized this overlap through regulatory flow, salinity, and temperature requirements that protect water quality and beneficial uses.

42. State Water Board Water Rights Decision 1641 (or "D-1641"), issued in December 1999 and revised March 2000, includes minimum Delta outflow and other regulatory limits for Central Valley Project ("CVP") and State Water Project ("SWP") operations to meet 1995 Bay-Delta Plan requirements.

43. As noted, the Bay-Delta Plan specifies water quality objectives for the protection of beneficial uses of water in the Bay-Delta, including fish and wildlife, agricultural, and municipal and industrial uses. The permit terms and conditions contained in D-1641 were derived from the flow and water quality objectives contained in the Bay-Delta Plan. In part, D-1641 assigns responsibility for meeting the water quality objectives included in the Bay-Delta Plan. D-1641 places responsibility on DWR and Bureau for measures to ensure that specified water quality objectives are met, in addition to other requirements. The flow objectives are intended to assist with fish migration, and also to keep the Delta and water exported from the Delta from getting too salty for municipal and agricultural uses.

44. The Delta Outflow objective is intended to protect estuarine habitat for anadromous fish and other estuarine dependent species. Delta outflows affect migration patterns of both estuarine and anadromous species and the availability of habitat. Freshwater flow is an important cue for upstream migration of adult salmon and is a factor in the survival of smolts moving downstream through the Delta. The populations of several estuarine-dependent species of fish and shrimp vary positively with flow as do other measures of the health of the estuarine ecosystem. Freshwater inflow also has chemical and biological consequences through its effects on loading of nutrients and organic matter, pollutant concentrations, and residence time.

45. The Delta Outflow objective includes requirements for calculated minimum net flows from the Delta to Suisun and San Francisco Bays (the Net Delta Outflow Index or "NDOI") and maximum salinity requirements (measured as electrical conductivity or "EC"). Since salinity in the Bay-Delta system is closely related to freshwater outflow, both types of objectives are indicators of the extent and location of low salinity estuarine habitat.

46. The Delta outflow objectives vary by month and water year type. With some flexibility provided through a limited set of compliance alternatives, the basic outflow objective sets minimum outflow requirements that apply year round.

47. The Delta Cross Channel ("DCC") gate objective was designed to protect fish and wildlife beneficial uses (specifically Chinook salmon) while simultaneously recognizing the need for fresh water to be moved through the interior Delta to the southern Delta for SWP and CVP

uses. The current objective states that the DCC gates shall be closed for a total of up to 45 days for the November through January period, stay closed from February through May 20, and be closed for a total of 14 days for the May 21 through June 15 period. Closure of the DCC gates is important for the protection of salmon survival. Opening the DCC gates during winter and spring months can negatively affect juvenile Chinook salmon survival by causing straying into the interior and then southern Delta where survival is much lower than for fish that stay in the mainstem of the Sacramento River. Opening the DCC gates significantly improves water quality (e.g. lowers salinity) in the interior and southern Delta including at the SWP and CVP export facilities and Contra Costa Water District's diversions, particularly when Delta outflow is low.

48. Water quality objectives contained in the Bay-Delta Plan include salinity standards to protect agricultural beneficial uses. Table 2 objectives include electrical conductivity ("EC") requirements of 2.78 mmhos/cm in the Sacramento River at Emmaton between 1 April and 15 August of critical dry years; EC requirements of 2.20 mmhos/cm in the San Joaquin River at Jersey Point between 1 April and 15 August of critical dry years and EC requirements of 0.7 mmhos/cm (April-August) and 1.0 mmhos/cm (September-March) at four locations in the South Delta (Vernalis, Brandt Bridge, Old River near Middle River and Old River at Tracy Road) in all years.

WATER QUALITY CONTROL PLAN FOR CENTRAL VALLEY: SACRAMENTO RIVER BASIN AND SAN JOAQUIN RIVER BASIN

49. The storage and diversion of water can impact downstream beneficial uses because of changes in temperature.

50. The Central Valley Basin Plan for the Sacramento River Basin and the San Joaquin River Basin ("Central Valley Basin Plan") includes temperature criteria adopted to protect beneficial uses.

51. The Central Valley Basin Plan requires that temperature shall not be elevated above 56°F in the reach from Keswick Dam to Hamilton City nor above 68°F in the reach from Hamilton City to the I Street Bridge during periods when temperature increases will be detrimental to the fishery.

52. These standards are required by the CWA to protect designated uses.

53. The SWRCB implemented the Central Valley Basin Plan temperature criteria in USBR's permits and licenses in WR Order 90-05.

54. WR Order 90-95, however, failed to implement the Central Valley Basin Plan requirement to meet the 56ºF temperature requirement in the reach between Red Bluff and Hamilton City.

55. Water necessary to meet water quality criteria is often not available for delivery for consumptive purposes.

56. Consequently, the SWRCB has approved successive temperature management plans that have moved the temperature compliance points required by the Central Valley Basin Plan to locations farther upstream from Red Bluff.

57. The SWRCB-approved temperature management plans have allowed for temperatures to be elevated above 56°F in the river reaches below designated temperature compliance points to Hamilton City.

58. The SWRCB-approved temperature management plans have also allowed temperatures to be elevated above 56ºF at designated temperature compliance points.

59. Despite relocation of these temperature compliance points, and an increase in maximum temperature allowed, the Bureau has repeatedly exceeded the temperature criteria.

THE PUBLIC TRUST DOCTRINE

60. The SWRCB must evaluate any allocation or diversion of a public trust resource in light of the impacts upon public trust interests and "avoid or minimize any harm to those interests." (*Nat'l Audubon Soc'y v. Superior Court*, 33 Cal. 3d 419, 426 (Cal. 1983).)

61. The SWRCB has a continuing and ongoing duty to protect and manage public trust resources for the benefit of the people of the State and to review and change the management of those resources to protect public interests. The State is not confined by past allocation decisions which may be incorrect in light of new knowledge or needs. The SWRCB therefore has the responsibility to "reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust." (*Nat'l Audubon,* 33 Cal. 3d at 447.)

62. "The public trust doctrine serves the function in that integrated system of preserving the continuing sovereign power of the state to protect public trust uses, a power which precludes anyone from acquiring a vested right to harm the public trust, and imposes a continuing duty on the state to take such uses into account in allocating water resources." (*Nat'l Audubon*, 33 Cal. 3d at 452.)

63. Fishing, environmental values, recreation, navigation, and waterborne commerce, each constitute established Public Trust uses.

64. Water diversion for agriculture, industrial, and municipal supply do not constitute established Public Trust uses.

65. California Fish and Game Code section 5937 requires that "[t]he owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam."

66. Where the Legislature mandates a water allocation such as that found in 5937, it has balanced the competing beneficial uses and made a reasonableness determination, to which judicial and SWRCB deference is required.

67. "Compulsory compliance with a rule requiring the release of sufficient water to keep fish alive necessarily limits the water available for appropriation for other uses." *California Trout, Inc. v. State Water Resources Control Board et al.,* (1989) 207 Cal.App.3d 585, 601.

PROCEDURAL BACKGROUND

68. On January 17, 2014, Governor Brown issued a Drought Emergency Proclamation, which was extended by subsequent executive orders, through May 31, 2016.

69. The Governor's Drought Proclamation directed the SWRCB, among other things, to consider petitions, such as the TUCPs, to modify requirements for reservoir releases or diversion limitations that were established to implement a water quality control plan.

70. Further, the Governor's Proclamation suspends Water Code section 13247 as it would apply to the TUC Orders. Section 13247 requires state agencies, including the SWRCB, to comply with water quality control plans, unless otherwise directed or authorized by statute.

71. Absent suspension of Water Code section 13247, the SWRCB could not approve a change petition that modifies permits and licenses in a way that does not provide for full attainment of the water quality objectives in the Bay-Delta Plan, or Central Valley Basin Plan, even during a drought emergency.

72. Nothing in the Governor's Proclamation asserts that the SWRCB may suspend water quality standards, or impair or eliminate designated uses, established and required by law under the CWA.

73. Nevertheless, the TUC Orders do regularly suspend water quality standards, and impair or eliminate designated uses, that are established and required by law under the CWA, including those established by the Bay-Delta Plan, the Central Valley Basin Plan, and 40 CFR 131.37.

74. On January 29, 2014, DWR and Bureau jointly filed a TUCP to temporarily modify requirements in their water right permits and license for the State Water Project ("SWP") and Central Valley Project ("CVP"), including temporary modification of requirements included in D-1641 to meet water quality objectives in the Bay-Delta Plan.

75. Specifically, the January 29, 2014 TUCP requested modifications to the Delta Outflow and DCC gate closure objectives. The SWRCB Executive Director's January 31, 2014 TUC Order allowed DWR and Reclamation to meet a lower Delta outflow level of 3,000 cubic feet per-second (cfs) in February and allowed the DCC Gates to be operated flexibly from February 1 through May 20.

76. The SWRCB Executive Director modified the TUC Order on February 7, 2014, February 28, 2014, March 18, 2014, April 9, 2014, April 11, 2014, April 18, 2014, and May 2, 2014, to extend and change the conditions of the TUC Order. In the May 2, 2014 TUC Order, the SWRCB Executive Director renewed the TUC Order, to expire on January 27, 2015.

77. The February 7, 2014 modification to the TUC Order clarified requirements related to exports that would apply when DWR and Bureau were meeting Decision 1641 requirements. The February 7 modification of the TUC Order adjusted the temporary export limitations when precipitation events occurred that enabled DWR and Bureau to comply with the Delta outflow and

DCC Gate closure requirements contained in Decision 1641. In these circumstances, exports greater than 1,500 cfs were allowed up to the export limits contained in Decision 1641, except that any SWP and CVP exports greater than 1,500 cfs were required to be limited to natural or abandoned flows, or transfers. The TUC Order did not require DWR and Bureau to meet the Decision 1641 Delta outflow requirements unless exports, other than transfers, were greater than 1,500 cfs. All other provisions of the January 31, 2014 TUC Order were continued.

78. The February 28, 2014 modification to the TUC Order continued the modified Delta outflow levels of 3,000 cfs originally approved on January 31, 2014, through the month of March. All other provisions of the TUC Order continued to be in effect.

79. The March 18, 2014 modification of the TUC Order provided additional flexibility to export water while Delta inflows were elevated following precipitation events by adding an alternate set of compliance requirements for the end of March that would be in effect while higher Delta inflows persisted. Specifically, when precipitation and runoff events occurred that allowed the DCC Gates to be closed and compliance with the flow or salinity requirements included in footnote 10 of Table 3 in Decision 1641, but the additional Delta outflow requirements contained in Table 4 of Decision 1641 were not being met, the Order permitted exports of natural and abandoned flows up to the Export Limits contained in Table 3 of Decision 1641.

80. The April 9, 2014 modification of the TUC Order extended the Delta outflow and Export modifications of the March 18 TUC Order into April. All other provisions of the TUC Order continued to be in effect.

81. The April 11, 2014 modification of the TUC Order allowed Bureau to meet modified San Joaquin River flow requirements from April 11 through June as proposed in the DOP. Specifically, from April 11 until the start of the 31-day pulse flow period beginning in mid-April, minimum San Joaquin River flows at Vernalis were required to be no less than 700 cfs on a 3 day average. During the pulse flow period from mid-April through mid-May, the Order required that minimum flows be no less than 3,300 cfs for 16 days and 1,500 cfs for the remaining 31-day pulse flow period, or any pulse or pulses with an equivalent flow volume that was approved by the

fisheries agencies. From the end of the pulse flow period through May, flows were required to be no less than 500 cfs.

82. The April 18, 2014 modification allowed DWR and Bureau to export additional supplies while inflows to the Delta were increased during the April and May San Joaquin River pulse flow period. Specifically, the modifications to the TUC Order allowed for exports of 100 percent of the 3-day average of San Joaquin River flows at Vernalis or 1,500 cfs, whichever is greater, during the pulse flow period. These export limits were not constrained by meeting D-1641 Delta outflow conditions, including Footnote 10 of Table 3 in Decision 1641.

83. The May 2, 2014 Order extended the modification of the Delta outflow requirement to 3,000 cfs into May and July. The requirement to meet the Sacramento River flow objective at Rio Vista for the protection of fish and wildlife, was modified from September through November 15 to 2,000 cfs on a monthly average, with a 7-day running average of no less than 1,500 cfs. The compliance point for the requirement to meet the Western Delta electrical conductivity (EC – a measure of salinity) objective for the protection of agriculture at Emmaton on the Sacramento River was moved to Threemile Slough on the Sacramento River from May through August 15. The TUC Order also included additional deadlines for reporting amounts of water conserved and submittal of updated water balance information. The Export Limits in the TUC Order were also modified to reflect the current status of the ordering conditions.

84. On September 24, 2014, the SWRCB issued Order WR 2014-0029 Denying Petitions for Reconsideration and Addressing Objections as to each of the 2014 TUC Orders.

85. On February 3, 2015, the Executive Director issued an Order approving the following temporary changes to D-1641 requirements during February and March:

a. The minimum daily average net Delta outflow requirement of 7,100 cfs or equivalent salinity specified in footnote 10 of D-1641, plus the requirement to meet higher flows of 11,400 cfs or equivalent salinity at Chipps Island for a certain number of days specified in Table 4 of D-1641, was reduced to a minimum Delta outflow requirement of 4,000 cfs;

b. When D-1641 requirements were not being met, the maximum rate of export from the Delta was limited to: (a) 1,500 cfs when Delta outflow was between 4,000 cfs and 7,100 cfs or the DCC Gates were open, or (b) up to the D-1641 limits when the DCC Gates were closed and Delta outflow was above 7,100 cfs but the additional requirements included in Table 4 were not being met except that those diversions were limited to natural and abandoned flows;

c. The requirement to close the DCC Gates was changed to allow the gates to be open under certain circumstances; and,

d. The minimum San Joaquin River flow requirement at Vernalis was reduced from 710 or 1,140 cfs, depending on hydrology, to 500 cfs.

86. The March 5, 2015, Order modified the February 3, 2015, Order by specifying that:

a. DWR and the Bureau should use the conserved water pursuant to the TUCP in accordance with their 2015 DCP and Temperature Management Plan for the Sacramento River;

b. Water transfers were exempted from the export provisions; and,

c. The intermediate export rate of 3,500 cfs was approved when Delta outflow was between 5,500 cfs and 7,100 cfs, the DCC gates were closed, and DWR or Reclamation determined that additional water was necessary to meet minimum public health and safety needs after notifying the Executive Director.

87. The Executive Director issued an Order on April 6, 2015, that approved changes through June. The April 6 Order extended the changes to Delta outflow and export requirements described above through June, and extended the change to DCC Gate requirements through May 20. In addition, the April 6 Order made the following changes:

a. The April 6 Order reduced the required volume of the pulse flow from April 15 through May 15 from 3,110 cfs, depending on hydrology, to 710 cfs.

b. The April 6 Order required Reclamation to comply with the pulse flow requirement contained in the NMFS Biological Opinion.

c. The minimum San Joaquin River flow requirement at Vernalis was changed following the pulse flow period described above and until May 31 from 710 cfs or 1,140 cfs, depending on hydrology, to 300 cfs. In June, the requirement was reduced to 200 cfs; and,

d. The compliance point for the Western Delta agricultural salinity requirement at Emmaton on the Sacramento River was moved to Threemile Slough on the Sacramento River from April through June.

88. The July 3, 2015 TUC Order provided:

a. During July, the minimum Delta outflow level specified in Table 3 of Decision 1641 as measured by the Net Delta Outflow Index (NDOI) described in Figure 3 of Decision 1641 shall be no less than 3,000 cubic-feet per second (cfs) on a monthly average. The 7-day running average shall be no less than 1,000 cfs below the monthly average.

b. During September, October and November the minimum Sacramento River at Rio Vista flow rate specified in Table 3 of Decision 1641 shall be no less than 2,500 cfs on a monthly average. The 7-day running average shall be no less than 2,000 cfs.

c. Through August 15, 2015, the Western Delta, Sacramento River at Emmaton electrical conductivity (EC) compliance location specified in Table 2 of Decision 1641 is moved to Threemile Slough on the Sacramento River.

d. Through November 30, 2015, the maximum Export Limits specified in Table 3 of Decision 1641 are modified as follows:

i. When Decision 1641 Delta outflow, Rio Vista flow, and Emmaton EC requirements in Tables 2 and 3 of Decision 1641 are not being met, the combined maximum exports at the SWP Banks Pumping Plant and the CVP Jones Pumping Plant shall be no greater than 1,500 cfs.

ii. During the effective period of the July 3 Order, if precipitation events occur that enable DWR and Reclamation to fully comply with the above referenced requirements, then Decision 1641 requirements shall be

operative, except that any SWP and CVP exports greater than 1,500 cfs shall be limited to natural or abandoned flow, or transfers as specified in condition 1.d.iii.

iii. These export limitations do not apply to water transfers. Based on additional information or changed circumstances, the export limits imposed pursuant to this Order may be modified through the consultation process described in condition 2, below.

e. Pursuant to the requirements of the July 3, 2015 Order, and State Water Board Order WR 90-5, Reclamation, in consultation with the fisheries agencies, shall implement the Sacramento River Temperature Management Plan with any changes required by the Executive Director, subject to key elements of the Plan specified in the Order.

89. The August 4, 2015 TUC Order lowered the minimum dissolved oxygen concentration requirement on the Stanislaus River below Goodwin Dam that Reclamation is required to meet, from 7.0 milligrams per liter (mg/l) to 5.0 mg/l through November 30, 2015.

90. The SWRCB and Executive Director have repeatedly stated that absent suspension of Water Code section 13247 by the Governor's Drought Proclamation, the SWRCB and Executive Director could not have legally approved these TUC Orders that modify permits and licenses in ways that do not provide for full attainment of water quality objectives that are required by a basin plan, even during a drought emergency.

91. While Defendants regularly justify the TUC Orders on the basis that reduced flows will allow for greater upstream storage to be utilized for temperature control, minimum instream flow requirements, and salinity needs later in the season, reducing excessive water deliveries earlier in the year would provide greater benefits to protect aquatic species that had been pushed to the brink of extinction.

92. Estuarine fish populations now are at record low levels and cannot be considered resilient at all.

93. Anadromous salmonid populations have also experienced significant impacts over the past four years associated with the drought.

94. The changes included in the TUC Orders are likely to have negative effects on these and other fish and wildlife species.

95. In particular, the importance of Delta outflow to estuarine resource protection is well documented in the Bay-Delta and in estuaries around the world.

96. Adequate instream flows are also important to salmonids to provide appropriate habitat conditions, including temperatures and dissolved oxygen levels. The TUC Orders reduce Delta outflows (and the associated river flows that provide these outflows) and San Joaquin River flows to the detriment of fish and wildlife. The opening of the Delta Cross Channel Gates and export operations with reduced outflows and river flows also potentially increases impacts to fishery resources.

97. The serial and temporary nature of the TUC Orders, and temperature modifications, renders them capable of repetition while evading judicial review.

FACTUAL BACKGROUND

98. The Central Valley Project ("CVP") is a federal water management project in California, under the supervision and operation of the Bureau. The CVP is located in and/or diverts water to and from the watershed of the Sacramento and Joaquin Rivers and tributaries.

99. The watershed of the Bay-Delta Estuary is a source of water for much of the State of California, providing water used for municipal, agricultural, and environmental purposes.

100. The State Water Project ("SWP"), operated by DWR, and the federally managed CVP, operated by the Bureau, are water management projects that work together to release previously-stored water into the Delta and divert natural flows. The water diverted by the SWP and CVP in the Delta is exported to areas south and west of the Delta through a system of water conveyance facilities including canals, aqueducts, and pump stations. Many of the CVP pumps are shared with the SWP.

101. The waterways that make up the Bay-Delta Estuary and its tributaries are also used by fish and wildlife, and have other public trust values. The Bay-Delta Estuary is one of the

largest ecosystems for fish and wildlife habitat and production in the United States. Many of the fish that live in or migrate through the estuary are protected under the state and federal Endangered Species Act.

Long-standing Plight of the Bay-Delta's Anadromous and Pelagic Fisheries

102. Historical and current human activities have degraded the beneficial uses of the Bay-Delta estuary, as evidenced by the declines in populations of many of the biological resources of the Bay-Delta.

103. Species that are listed or proposed to be listed, pursuant to state and federal Endangered Species Acts, and that depend upon the Bay-Delta for all or a critical part of their life cycle include: southern Distinct Population Segment (DPS) of green sturgeon (*Acipenser medirostris*), federal threatened, candidate for federal endangered; Delta smelt (*Hypomesus transpacificus*), state endangered, federal threatened, Longfin smelt (*Spirinchus thaleichthys*), state threatened, candidate for federal threatened; Central Valley steelhead (Oncorhynchus mykiss), federal threatened; Sacramento winter-run Chinook salmon (Oncorhynchus tshawytscha), state endangered, federal endangered; Central Valley spring-run Chinook salmon (Oncorhynchus tshawytscha), state threatened, federal threatened; Central Valley fall/late-fall-run Chinook salmon (*Oncorhynchus tshawytscha*), federal species of concern, state species of special concern; Sacramento splittail (*Pogonichthys macrolepedotus*), state species of special concern; Pacific lamprey (*Entosphenus tridentate*), federal species of concern and river lamprey (*Lampetra ayresi*), state species of special concern.

104. The CVP and SWP also have potential to adversely affect southern resident killer whales or Orcas (*Orcinus orca*), which are federal listed as endangered because they are dependent upon Chinook salmon for 70% of their diet, and a reduced quantity and quality of diet has been identified as one of the major causes of their decline.

105. The precipitous collapse of the Central Valley's pelagic and anadromous fish populations has been documented at considerable length. The CVP's water export facilities in the Delta began operation in 1951 and fisheries declined. Following construction of the SWP's Banks Pumping Plant, in 1967, the decline of fisheries accelerated. Since 1967, the California

Department of Fish and Wildlife ("DFW") Fall Midwater Trawl abundance indices for striped bass, Delta smelt, longfin smelt, American shad, splittail and threadfin shad have declined by 99.7, 97.8, 99.9, 91.9, 98.5 and 97.8 percent, respectively.

106. In 2004, Delta pelagic species experienced a collapse in fish populations known as the "Pelagic Organism Decline." Fish abundance indices for 2002 and 2004 were at record lows for Delta smelt and striped bass, and near record lows for longfin smelt and threadfin shad. These low abundance indices for pelagic species recorded during the 2002-2004 decline continued to the 2012-2015 drought.

107. The SWRCB's weakening and waiving of water quality standards through TUC Orders during the ongoing drought period has greatly exacerbated conditions for the Delta smelt, causing another dramatic decline in the Delta smelt's population.

108. The Delta smelt are now facing extinction. According to the 2014 Midwater Trawl, conducted monthly from September through December, between 2011 and 2014, abundance indices for Delta smelt and longfin smelt have declined an additional 97.4 and 96.7 percent, respectively, from already perilously low abundance levels.

109. In the spring of 2015, DFW's monthly Spring Kodiak Trawl, of spawning Delta smelt, collected only six Delta smelt in March, one Delta Smelt in April and eight in May.

110. The U.S. Fish & Wildlife Service's ("USFWS") Anadromous Fisheries Restoration Program, established pursuant to the CVPIA, documents that, since 1967, in-river natural production of Sacramento winter-run Chinook salmon and spring-run Chinook salmon have decline by 98.2 and 99.3 percent, respectively, and are only at 5.5 and 1.2 percent, respectively, of doubling levels mandated by the CVPIA, the California Water Code and California Fish & Game Code.

111. In 2014, SWRCB relaxed Sacramento River temperature criteria in 2014 by moving the temperature compliance point upstream and eliminated much of the spawning habitat for fall-, winter- and spring-run Chinook salmon. The delivery of 1.2 million acre-feet of water to the CVP Sacramento Valley water contractors between April and September depleted the cold-water pool behind Shasta Dam and the resulting lethal temperatures in the river caused the loss of

an estimated 95% of eggs and emerging winter-run Chinook salmon, 98% of eggs and emerging fall-run Chinook salmon and virtually all of emerging spring-run Chinook salmon.

112. The SWRCB's relaxation of Delta outflow requirements in 2015 likely caused the loss of the majority of remaining survivors.

113. The loss of two consecutive year classes would be catastrophic to the species.

114. For 2015, the Bureau proposed to increase deliveries to almost 1.6 million acre-feet to the CVP's Sacramento Valley contractors, and informed the SWRCB that it is unlikely that it will be able to meet temperature requirements in the Sacramento River below Shasta Dam.

115. The Bureau schedules water deliveries in the spring based on assumptions of future rainfall and not what was stored from the preceding wet season.

116. The adverse consequences of this policy are magnified during drought sequences. Delivering excessive quantities of water and draining reservoirs to the point of not being able to comply with water quality standards is not a defensible excuse for the failure to provide adequate cold water to protect fisheries.

117. Cold water is depleted to offset the hotter water the SWRCB has permitted to be released.

118. Failure to adopt and enforce defensible temperature criteria has been a key factor in the continued decline of Sacramento Chinook salmon to the point where winter-run and spring-run are now threatened with extinction and California's commercial salmon fishery is wholly dependent on grow-and-truck hatchery production for survival.

119. Central Valley agriculture has not experienced impacts comparable to the precipitous declines suffered by the Delta smelt during the present drought. According to the annual crop reports submitted by county agricultural commissioners to the California Department of Agriculture, crop production in the San Joaquin Valley increased in each of the last three years. Crop production increased from $30.47 billion in the last wet year (2011) to $32.53 billion in the first drought year (2012) and $35.62 billion in the second drought year (2013). The same is true in the Sacramento Valley, where crop production increased from $4.22 billion in 2011 to $4.69

billion in 2012, and $5.33 billion in 2013. According to the California Economic Development Department, farm jobs also increased between 2012 and 2014, the first three years of the drought.

120. The latest indicators show near historic or historic low levels of abundance for all of the Delta's pelagic and anadromous species. All indications are that the populations that depend on the Delta are in extreme risk of added mortality under the present 2015 conditions.

121. The State Board conducted an extensive public hearing in 2010, pursuant to the Sacramento-San Joaquin Delta Reform Act. Senate Bill No. 1 (SB1) (Stats. 2009 (7th Ex. Sess.) ch 5), (commencing with Wat. Code, Section 85000). The Board concluded, in the Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem released in August 2010, that recent Delta flows are insufficient to support native Delta fishes for today's habitats and that significantly greater flows were necessary to protect public trust resources.

122. The DFW also conducted an extensive proceeding in 2010, pursuant to the Delta Reform Act, to develop Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta. In the report released 23 November 2010, DFW found that significantly greater flows and considerably stronger biological objectives were necessary to protect the public trust resources of the Delta. Yet the SWRCB and Executive Director Howard never implemented those enhanced flows or balanced the public trust with other beneficial uses, and they again failed to do so in evaluating the requests of the Bureau and DWR to relax Delta water quality standards.

123. According to DWR, California has experienced ten multi-year droughts of large-scale extent in the last one hundred years, spanning 41 years. Although the state experiences drought conditions more than forty percent of the time, the CVP and SWP continue to operate and deliver water without consideration of drought conditions. The CVP and SWP draw down reservoir storage under the assumption that the coming year will be wet, providing little reserve storage in the event the following year is dry. In the event of another dry year, the projects endeavor to maximize deliveries in the hope that it will rain next year. This pattern has repeated itself for decades, most recently during the 1987-1992, 2000-2002, 2007- 2009 and 2013-2015 droughts.

124. In a report on the 1976-1977 drought, DWR observed that "[t]he usual strategy described in discussions with Central Valley surface water project operators who are experiencing a below normal supply is to serve all the water possible on demand of the users, carrying little or no water over to guard against a dry 1977…" and "[t]his strategy is based on the belief that a good crop this year is desirable, since next year will probably be a near-normal or better water supply."

125. This remains the pattern and practice today.

126. During the summer of 2012, the CVP drew down 2.2 million acre-feet ("MAF") of water from Shasta Reservoir. The following winter the reservoir gained 1.5 MAF but the Bureau drew down 2.24 MAF in the summer of 2013. Shasta reservoir gained approximately 758 thousand acre-feet ("TAF") in the winter of 2014 but almost 1.4 MAF was drawn down the following summer. In the winter of 2015, Shasta reservoir gained almost 1.7 MAF but the Bureau proposes to deliver almost 1.6 MAF to Sacramento Valley contractors, plus whatever they are required to deliver to repel salinity and comply with water quality standards in the Delta.

127. Should the coming winter be dry, water shortages in 2016 are likely to be even worse than 2015.

128. The CVP and SWP have refused to provide a margin of safety and adjusted operations to meet the state's Mediterranean climate and over-subscribed water delivery system.

129. The CVP and SWP projects rely on the SWRCB to bail them out by relaxing standards and reducing water flows crucial to water quality and healthy and reproducible fisheries, and the SWRCB has obliged the projects by relaxing standards thereby encouraging them to continue to operate on the edge of crisis while fisheries, hanging on the lip of extinction, pay the price.

130. During the drought of 1987-1992, the SWRCB informed DWR and the Bureau that it would not take enforcement action for more than 245 violations of standards protecting Delta agriculture and fisheries, even though further violations were expected. In response to a 2013 request to weaken standards, SWRCB Executive Director Tom Howard informed DWR and the Bureau that he would take no action if the projects operated to meet critically dry year criteria, even though 2013 was not a critically dry year. Last year, SWRCB Executive Director Tom

Howard weakened Bay-Delta standards on nine different occasions and, in 2015, has already issued additional orders modifying Bay-Delta standards, plus an order regarding temperature control in the Sacramento River.

131. California water delivery system is increasingly a wet-year system that cannot meet the water demands of its customers in dry and drought years.

132. In average water years, water rights claims throughout the Bay-Delta watershed exceed unimpaired flow by five and one-half times. As drier years occur, that factor increases dramatically as flows decrease and crisis ensues because the system is over-subscribed. Within years following their construction, the CVP and SWP signed contracts for the delivery of almost 14 million acre feet of water or almost half the average unimpaired runoff in the entire basin.

133. The Bay-Delta Water Quality Control Plan and the Central Valley Improvement Project Improvement Act, P.L. 102-575 § 3406, *et seq*., and Cal. Fish & Game Code provide a narrative standard that "[w]ater quality conditions shall be maintained together with other measures in the watershed, sufficient to achieve a doubling of natural production of chinook salmon from the average production of 1967-1991, consistent with the provisions of State and federal law."

134. Sacramento winter-run Chinook salmon declined 88.4% from the 54,439 counted during the Anadromous Fisheries Restoration Program ("AFRP") Baseline Period of 1967 to 1991, to 6,320 during the AFRP Doubling Period of 1992-2011. Levels of Sacramento winter-run Chinook salmon are only at 5.8% of the CVPIA mandated target, in continuous violation of the narrative standard.

135. Sacramento spring-run Chinook salmon declined 97.6% from the 29,412 counted during the Anadromous Fisheries Restoration Program ("AFRP") Baseline Period of 1967 to 1991, to 718 during the AFRP Doubling Period of 1992-2011. Levels of Sacramento spring-run Chinook salmon are only at 1.2% of the CVPIA mandated target, in continuous violation of the narrative standard.

136. While the SWRCB has substantially relied on impacts to the agricultural economy of the State of California as justification for suspending water quality standards and further

impairing threatened and endangered fish species, the evidence shows that California agriculture has in fact recorded increasing profits during the timeframe in which the TUC Orders have been granted.

137. The Bureau's operation of the CVP, and DWR's operation of the SWP, respectively and together are causing and contributing to rampant violations of the Bay-Delta Water Quality Control Plan and D-1641, including but not limited to standards for salinity, outflow, and temperature.

138. Defendants have committed to a pattern and practice of allowing these violations to occur, in direct contravention of the federal CWA, and Public Trust Doctrine.

JURISDICTION AND VENUE

139. This Court has jurisdiction over this action pursuant to sections 526 and 1060 of the California Code of Civil Procedure.

140. Venue is proper in this Court under Code of Civil Procedure sections 393, 395 and 401 as Defendant SWRCB is a state agency, Defendant SWRCB's principal offices are located in Sacramento, and the Attorney General has offices in Alameda County.

141. There exists now between the parties hereto an actual, justiciable controversy in which Plaintiffs are entitled to have a declaration of their rights and of the Defendants' obligations, and further relief, because of the facts and circumstances set forth herein.

142. Plaintiffs are interested in having the laws properly executed and Defendants' duties properly performed so that the public's right to, and interest in, environmental protection is fully secured.

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

144. Plaintiffs have performed all conditions precedent to this filing, and have actively participated in Defendants' administrative processes by submitting comments, along with other public agencies, organizations, and members of the public, asserting the claims contained herein. As such, Plaintiffs have fully exhausted their administrative remedies, to the extent such remedies exist and to the extent that exhaustion of administrative remedies is legally necessary.

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

PRIVATE ATTORNEY GENERAL DOCTRINE

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

147. Issuance of the relief requested in this Complaint will confer significant benefits on the general public, and result in the enforcement of important rights affecting the public interest, by, among other benefits and rights, upholding existing protections for threatened, endangered, and imperiled species throughout the San Francisco-San Joaquin Bay-Delta.

148. The necessity and financial burden of enforcement are such as to make an award of attorneys' fees appropriate in this proceeding. Absent enforcement by Plaintiffs, Defendants' pattern and practice of adopting TUC Orders, and modifying or suspending temperature requirements, in violation of law, might otherwise be deemed valid despite their legal and factual inadequacies, and, as a result, cause significant, adverse environmental effects that might otherwise have evaded been prevented.

149. Plaintiffs' attorneys have served a copy of its Complaint and First Amended Complaint on the Attorney General's office to give notice of Plaintiffs' intent to bring this proceeding as private attorneys general under Code of Civil Procedure section 1021.5 (attached as Exhibit A).

INJUNCTIVE AND DECLARATORY RELIEF

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

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

FIRST CLAIM FOR RELIEF

PATTERN AND PRACTICE OF TUC ORDERS IN VIOLATION OF FEDERAL CLEAN WATER ACT AND SUPREMACY CLAUSE

152. Plaintiffs incorporate by reference each and every allegation contained in this Complaint as though fully set forth herein.

153. Defendants admit that without suspension of Water Code section 13247 by the Governor's Drought Proclamation, the SWRCB would be unable to legally approve the Real Parties' TUCPs.

154. Nothing, however, in the Governor's Drought Proclamation suspends the SWRCB's duty to comply with the federal CWA.

155. Therefore, in issuing the TUC Orders, which relax Bay-Delta Plan water quality objectives, Defendants have implemented and relied upon a pattern, practice, and de facto policy, of suspending, waiving, weakening, or otherwise disregarding CWA standards in contravention of federal law.

156. These ongoing disputes create an actual, clear, and present controversy as to the substantive and procedural legality of Defendants' serial approval of consistent and ongoing violations of water quality and flow standards adopted to protect designated and beneficial uses.

157. Defendants' pattern and practice disregard of the federal CWA in issuing the TUC Orders is contrary to law, and in excess of jurisdiction.

WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

SECOND CAUSE OF ACTION

PATTERN AND PRACTICE OF RELAXING SACRAMENTO RIVER TEMPERATURE CRITERIA IN VIOLATION OF CENTRAL VALLEY BASIN PLAN, FEDERAL CLEAN WATER ACT, AND SUPREMACY CLAUSE

158. Plaintiffs incorporate by reference each and every allegation contained in this Complaint as though fully set forth herein.

159. Defendants have acquiesced and participated in a pattern and practice of disregard for Central Valley Basin Plan and CWA requirements by, including by not limited to, relying upon average and not daily temperature criteria, approving temperature criteria that permit lethality, raising temperature criteria, excluding significant reaches of identified spawning habitat from requirements to comply with temperature criteria, approving relocated compliance locations based upon the Bureau's unwillingness to reserve storage to meet water quality standards, and by failing to enforce violations of temperature criteria.

160. These ongoing disputes create an actual, clear, and present controversy as to the substantive and procedural legality of Defendants' serial approval of consistent and ongoing violations of temperature standards adopted to protect designated and beneficial uses.

161. Defendants' pattern and practice disregard of the Central Valley Basin Plan and federal CWA in approving relaxation and exceedances of temperature criteria is arbitrary, capricious, not supported by findings or evidence, contrary to law, and in excess of jurisdiction.

WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

THIRD CAUSE OF ACTION

PATTERN AND PRACTICE VIOLATION OF PUBLIC TRUST DOCTRINE

162. Plaintiffs incorporate by reference each and every allegation contained in this Complaint as though fully set forth herein.

163. Defendants have abridged and abrogated their Public Trust duties by authorizing the Real Parties' illegal and unsustainable water diversions that interfere with, and result in the irreparable loss of, imperiled Bay-Delta species, to the detriment of legitimate public trust uses including, but not limited to, fishing, fish and wildlife habitat, recreation, and tourism.

164. Defendants have abridged and abrogated their Public Trust duties by failing to conduct a proper Public Trust analysis to protect Public Trust uses and resources against the unreasonable and unsustainable water diversion authorized by, among other things, the TUC Orders, and SWRCB Order 90-05.

165. These ongoing disputes create an actual, clear, and present controversy as to the substantive and procedural legality of Defendants' serial approval of consistent and ongoing worsening of water quality and habitat conditions throughout the Bay-Delta estuary, directly leading to the imminent demise of Bay-Delta salmonids and pelagic species.

166. Defendants' pattern and practice disregard of the Public Trust Doctrine in issuing the TUC Orders, and allowing for excessively high temperatures in the Sacramento River, is arbitrary, capricious, not supported by findings or evidence, contrary to law, and in excess of jurisdiction.

WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

PRAYER FOR RELIEF

Plaintiffs pray for relief as follows:

1. Enter a declaratory judgment that Defendants have engaged in an illegal pattern and practice of issuing Temporary Urgency Change Orders that violate federal Clean Water Act standards;
2. Enter a declaratory judgment that Defendants have engaged in an illegal pattern and practice of establishing and modifying in-stream temperature requirements for the Sacramento River that violate the Central Valley Basin Plan and federal Clean Water Act standards;
3. Enter a declaratory judgment that Defendants have engaged in an illegal pattern and practice of failing to meaningfully consider the Public Trust Doctrine, and failing to conserve Public Trust resources, in violation of the Public Trust Doctrine, in issuing the Temporary Urgency Change Orders, and Sacramento River temperature requirements;
4. Preliminarily and permanently enjoin Defendants from their illegal pattern and practice of issuing Temporary Urgency Change Orders that violate federal Clean Water Act standards;
5. Preliminarily and permanently enjoin Defendants from their illegal pattern and practice of establishing and modifying in-stream temperature requirements for the

Sacramento River that violate the Central Valley Basin Plan and federal Clean Water Act standards;

6. Preliminarily and permanently enjoin Defendants from their illegal pattern and practice of failing to meaningfully consider the Public Trust Doctrine, and failing to conserve Public Trust resources, in violation of the Public Trust Doctrine, in issuing the Temporary Urgency Change Orders, and Sacramento River temperature requirements;

7. Award Plaintiffs the costs of this action, including their reasonable attorneys' fees; and,

8. Grant such other relief as the Court deems just and proper.

DATED: September 16, 2015

AQUA TERRA AERIS LAW GROUP

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Jason R. Flanders
Attorneys for Plaintiffs
California Sportfishing Protection Alliance,
AquAlliance, and California Water Impact Network

VERIFICATION

I, Jason Flanders, am counsel of record for Plaintiffs AquAlliance, California Water Impact Network, and California Sportfishing Protection Alliance. I sign for these Plaintiffs absent from the county of counsel and/or because facts contained in the Complaint are within the knowledge of counsel. I have read the foregoing Complaint know the contents thereof. The same is true of my own knowledge, or upon information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of September, 2015, in Oakland, California.

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Jason R. Flanders