

1 Timothy M. Taylor (SB #144335)
tim.taylor@stoel.com
2 Elizabeth P. Ewens (SB #213046)
elizabeth.ewens@stoel.com
3 Daniel L. Quinley (SB #312579)
daniel.quinley@stoel.com
4 STOEL RIVES LLP
5 500 Capitol Mall, Suite 1600
6 Sacramento, CA 95814
Telephone: 916.447.0700
Facsimile: 916.447.4781

7 Attorneys for Petitioners and Plaintiffs
8 TEHAMA-COLUSA CANAL AUTHORITY; SAN LUIS & DELTA-MENDOTA
9 WATER AUTHORITY; FRIANT WATER AUTHORITY; GLENN-COLUSA
10 IRRIGATION DISTRICT; RECLAMATION DISTRICT 108; NATOMAS
11 CENTRAL MUTUAL WATER COMPANY; RIVER GARDEN FARMS
12 COMPANY; and SUTTER MUTUAL WATER COMPANY

13 [ADDITIONAL COUNSEL ON NEXT PAGE]

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF FRESNO

16 TEHAMA-COLUSA CANAL AUTHORITY, a
17 California Joint Powers Authority;
18 SAN LUIS & DELTA-MENDOTA WATER
19 AUTHORITY, a California Joint Powers Authority;
20 FRIANT WATER AUTHORITY, a California Joint
21 Powers Authority;
22 GLENN-COLUSA IRRIGATION DISTRICT, a
23 California Irrigation District;
24 RECLAMATION DISTRICT 108, a California
25 Reclamation District;
26 NATOMAS CENTRAL MUTUAL WATER
27 COMPANY, a California Water Company;
28 RIVER GARDEN FARMS COMPANY, a business
entity; and SUTTER MUTUAL WATER
COMPANY, a California Water Company,

Petitioners and Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF WATER
RESOURCES, a California State Agency; and
CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE, a California State Agency,

Respondents and Defendants.

DOES 1-50,

Real Parties in Interest.

CASE NO.

**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE RELIEF**

(Code Civ. Proc., §§ 526, 527, 1085,
1087, 1094.5; Pub. Resources Code,
§§ 21167, 21168, 21168.5)

**California Environmental Quality Act
(CEQA) Case**

[Deemed Verified as to Public Agency
Petitioners Pursuant to Code of Civil
Procedure section 446]

1 Meredith E. Nikkel (SB #254818)
mnikkel@downeybrand.com

2 Kevin M. O'Brien (SB #122713)
kobrien@downeybrand.com

3 Andrea P. Clark (SB #226310)
aclark@downeybrand.com

4 DOWNEY BRAND LLP
621 Capitol Mall, 18th Floor
5 Sacramento, CA 95814
Telephone: 916.444.1000
6 Facsimile: 916.444.2100

7 Attorneys for Petitioners and Plaintiffs
TEHAMA-COLUSA CANAL AUTHORITY; RECLAMATION
8 DISTRICT 108; NATOMAS CENTRAL MUTUAL WATER COMPANY;
RIVER GARDEN FARMS COMPANY; and SUTTER MUTUAL WATER
9 COMPANY

10 Rebecca R. Akroyd (SB #267305)
rebecca.akroyd@sldmwa.org

11 General Counsel
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
12 400 Capitol Mall, 28th Floor
Sacramento, CA 95814
13 Telephone: 916.321.4321
Facsimile: 209.826.9698

14 Attorneys for Petitioner and Plaintiff
15 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

16 Andrea A. Matarazzo (SB #179198)
andrea@pioneerlawgroup.net

17 PIONEER LAW GROUP, LLP
1122 S Street
18 Sacramento, CA 95811
Telephone: 916.287.9500
19 Facsimile: 916.287.9515

20 Attorneys for Petitioner and Plaintiff
21 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

22 Donald M. Davis (SB #169163)
ddavis@bwsllaw.com

23 BURKE WILLIAMS & SORENSEN LLP
444 South Flower Street, Suite 2400
24 Los Angeles, CA 90071-2953
Telephone: 213.236.2702

25 Attorneys for Petitioner and Plaintiff
26 FRIANT WATER AUTHORITY

27

28

1 Matthew G. Adams (SB # 229021)
2 madams@kaplankirsch.com
3 KAPLAN KIRSCH & ROCKWELL LLP
4 595 Pacific Avenue, 4th Floor
5 San Francisco, CA 94133
6 Telephone: 628.209.4151

7 Attorneys for Petitioner and Plaintiff
8 FRIANT WATER AUTHORITY

9 Andrew M. Hitchings, Esq. (SB #154554)
10 ahitchings@somachlaw.com
11 Kelley M. Taber, Esq. (SB #184348)
12 ktaber@somachlaw.com
13 SOMACH SIMMONS & DUNN
14 A Professional Corporation
15 500 Capitol Mall, Suite 1000
16 Sacramento, CA 95814
17 Telephone: 916.446.7979
18 Facsimile: 916.446.8199

19 Attorneys for Petitioner and Plaintiff
20 GLENN-COLUSA IRRIGATION DISTRICT

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INTRODUCTION

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2 1. Petitioners and Plaintiffs TEHAMA-COLUSA CANAL AUTHORITY, et al.
3 (collectively “Petitioners”) bring this action under the California Environmental Quality Act
4 (“CEQA”) (Pub. Resources Code, § 21000 et seq.) challenging decisions of Respondent and
5 Defendant CALIFORNIA DEPARTMENT OF WATER RESOURCES (“DWR”) as lead agency
6 and CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (“CDFW”) as responsible
7 agency (together, DWR and CDFW shall be referred to as “Respondents”), to certify and rely
8 upon a fatally defective environmental impact report (“EIR”) as the basis for DWR’s approval of
9 the Long-Term Operation of the California State Water Project (the “Project”) and CDFW’s
10 approval of an Incidental Take Permit (“ITP”) for the Project. Petitioners all hold, or represent
11 parties that hold, agreements with the United States Bureau of Reclamation (“Reclamation”) that
12 provide for water supply from the Central Valley Project (“CVP”). Petitioners, therefore, share
13 respective interests in the coordinated long-term operation of the CVP and State Water Project
14 (“SWP”) and would be negatively and substantially affected by the Project’s significant adverse
15 environmental impacts as well as Respondents’ procedural violations and improper approvals.
16 Petitioners bring this action to compel Respondents to conduct an environmental review process
17 in full compliance with CEQA before implementing the Project or otherwise relying on the ITP.

18 2. Petitioners seek a peremptory writ of mandate pursuant to Code of Civil Procedure
19 section 1085 and/or section 1094.5 setting aside Respondents’ approvals and ordering
20 Respondents to comply with their obligations under CEQA.

21 3. Respondents’ certification of and reliance on the EIR violates CEQA because,
22 although Respondents acknowledge that operation of the SWP is dependent on and
23 interconnected with the CVP operated by Reclamation, Respondents refused to meaningfully
24 consult and coordinate with this key agency as CEQA requires. Respondents ignored the
25 substance of numerous concerns raised by Reclamation, Petitioners, and others during the
26 administrative process, and Respondents proceeded to certify and rely upon a fundamentally
27 inadequate EIR.

28 4. Respondents’ failure to meaningfully consult with Reclamation not only violates

1 CEQA’s mandatory procedural requirements and constitutes a failure to proceed in the manner
2 required by law, it also renders the EIR substantively deficient. Respondents could not and did
3 not provide basic information necessary to establish the existing environmental setting; describe
4 all essential elements of the Project; evaluate a reasonable range of alternatives; analyze
5 reasonably foreseeable direct, indirect, and cumulative environmental impacts of the Project; or
6 enable Respondents to formulate effective mitigation measures. As a result, the EIR fails to
7 satisfy its basic informational purposes because it does not fairly or accurately describe how the
8 Project will be operated, and it does not disclose or mitigate the impacts that will result from such
9 operations.

10 5. Petitioners and others raised these issues in comments during the administrative
11 process leading to DWR’s certification of the EIR and approval of the Project, and CDFW’s
12 approval of the ITP; however, not only did Respondents fail to act on the comments, the
13 responses, including master responses, provided were perfunctory boilerplate answers which did
14 nothing to address the underlying deficiencies in the EIR. Respondents’ failure to meaningfully
15 respond to comments that raised significant environmental issues and Respondents’ decisions to
16 instead rely on a fundamentally inadequate EIR, and to adopt findings wholly unsupported by the
17 record of these proceedings, violates both the letter and the spirit of CEQA.

18 6. Because Respondents, as lead and responsible agencies, failed to proceed in the
19 manner required by law, prejudicially abused their discretion, and violated CEQA when they
20 certified and relied upon a fatally flawed EIR, Petitioners ask this Court to issue a peremptory
21 writ of mandate directing Respondents to: (1) set aside findings certifying and relying upon the
22 EIR; (2) set aside the Project and ITP approvals; and (3) order an injunction preventing
23 implementation of the Project or the issuance or implementation of any further Project-related
24 approvals by either agency until Respondents have fully complied with CEQA.

25 **PARTIES**

26 7. Petitioner TEHAMA-COLUSA CANAL AUTHORITY (“TCCA”) is comprised
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1 of water purveyor entities¹ that receive water from the CVP and use that water in the Sacramento
2 River watershed. The TCCA service area is 150,000 acres of irrigated farmland located along the
3 west side of the Sacramento Valley in the counties of Yolo, Colusa, Glenn, and Tehama. Entities
4 within TCCA’s service area have executed water service contracts with Reclamation for delivery
5 of CVP water. The amount of water available under CVP water delivery contracts to water
6 service contractors within TCCA’s service area totals 468,890 acre-feet per year. TCCA operates
7 and maintains the 140-mile Tehama-Colusa and Corning canals irrigation water supply system.
8 TCCA diverts water from the Sacramento River at Red Bluff Pumping Plant and Fish Screen,
9 which replaced the retired Red Bluff Diversion Dam. TCCA’s main office is in Willows,
10 California.

11 8. Petitioner SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
12 (“SLDMWA”) is, and at all times mentioned herein was, a joint powers authority formed under
13 California law to represent the common interests of its 28 member agencies relating to CVP water
14 supply and to operate and maintain the 116.5-mile Delta-Mendota Canal and related CVP
15 facilities that deliver its members’ water supplies for agricultural, municipal and industrial, and
16 environmental uses. SLDMWA’s member agencies contract with Reclamation for surface water
17 supply and provide water to approximately 1.2 million acres of irrigated agriculture in the San
18 Joaquin Valley, over 2 million people in the Silicon Valley, and approximately 200,000 acres of
19 managed wetlands of critical importance to the Pacific Flyway. SLDMWA’s main office is in
20 Los Banos, California. SLDMWA serves its members in San Joaquin, Stanislaus, Merced,
21 Fresno, Kings, San Benito, and Santa Clara Counties.

22 9. Petitioner FRIANT WATER AUTHORITY (“FRIANT”) is, and at all times
23 mentioned herein was, a public agency formed under California law by its members, the Friant
24 Division Contractors of the CVP. FRIANT manages delivery of San Joaquin River water
25 supplies by operating and maintaining the 152-mile Friant-Kern Canal to provide dependable,
26 sustainable water from Millerton Reservoir to its members. FRIANT’s member agencies serve

27 _____
28 ¹ A list of the entities within the Tehama-Colusa Canal Authority, the San Luis & Delta-
Mendota Water Authority, and the Friant Water Authority is attached as **Exhibit A**.

1 15,000 family farms with over one million acres in production. FRIANT also provides water to
2 the city of Fresno, California, California's fifth largest city. FRIANT's main office is located in
3 Lindsay, California, and serves its members in Fresno, Kern, Kings, Madera, Merced, and Tulare
4 Counties.

5 10. Petitioner GLENN-COLUSA IRRIGATION DISTRICT ("GCID") is, and at all
6 times mentioned herein was, an irrigation district formed in 1920 pursuant to the California
7 Irrigation District Law to provide irrigation water to farms located in Glenn and Colusa Counties
8 in California. (Wat. Code, § 20500 et seq.) GCID consists of approximately 170,000 acres of
9 land within the Sacramento Valley. GCID holds a combination of pre- and post-1914
10 appropriative water rights to divert water from the Sacramento River and certain tributaries.
11 GCID also holds a water rights settlement contract with Reclamation ("Sacramento River
12 Settlement Contract" or "SRS Contract") regarding GCID's diversions from the Sacramento
13 River during the irrigation season. GCID diverts water from the Sacramento River at its pumping
14 facility near Hamilton City. The water is then conveyed through GCID's Main Canal and laterals
15 to more than 1,500 landowners. GCID's main office is in Willows, California.

16 11. Petitioner NATOMAS CENTRAL MUTUAL WATER COMPANY ("NCMWC")
17 is, and at all times mentioned herein was, a California mutual water company organized and
18 existing under the laws of the State of California. NCMWC serves the water needs of landowners
19 on more than 35,000 acres of land within Sacramento and Sutter Counties. NCMWC holds
20 appropriative licenses and a permit to appropriate water from the Sacramento River, as well as an
21 SRS Contract with Reclamation. NCMWC's main office is in Rio Linda, California.

22 12. Petitioner RECLAMATION DISTRICT NO. 108 ("RD 108") is, and at all times
23 mentioned herein was, a governmental entity of the State of California, formed in 1870 under the
24 Reclamation District Law of 1868 for the purpose of forming a district to build levees and
25 "reclaim" land subject to periodic overflow from neighboring rivers and water bodies. RD 108
26 consists of approximately 58,000 acres in Colusa and Yolo Counties. RD 108 exercises riparian
27 water rights and licenses to divert from the Sacramento River and holds an SRS Contract with
28 Reclamation. RD 108's main office is in Grimes, California.

1 13. Petitioner RIVER GARDEN FARMS COMPANY (“RGF”) is, and at all times
2 mentioned herein was, a business entity organized and existing under the laws of the State of
3 California. RGF diverts water under riparian and appropriative rights from the Sacramento River
4 for the irrigation of approximately 6,450 acres in Yolo County. RGF holds an SRS Contract with
5 Reclamation. RGF’s main office is in Knights Landing, California.

6 14. Petitioner SUTTER MUTUAL WATER COMPANY (“SMWC”) is, and at all
7 times mentioned herein was, a California mutual water company organized and existing under the
8 laws of the State of California. SMWC holds appropriative water right licenses to divert from the
9 Sacramento River for the irrigation of approximately 50,100 acres in Sutter County. SMWC
10 holds an SRS Contract with Reclamation. SMWC’s main office is in Robbins, California.

11 15. Respondent CALIFORNIA DEPARTMENT OF WATER RESOURCES (“DWR”
12 or “Respondent”) is, and at all times mentioned herein was, a governmental agency and political
13 subdivision of the State of California, formed and existing under the California Water Code, with
14 its principal place of business in the County of Sacramento. Respondent operates the SWP.
15 Respondent’s operation and management of the SWP is at all times subject to the obligations and
16 limitations of all applicable state, federal, and other laws, including CEQA and the CEQA
17 Guidelines. Respondent is the lead agency under CEQA, and in that capacity acted to certify the
18 EIR and approve the Project.

19 16. Respondent CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
20 (“CDFW” or “Respondent”) is, and at all times mentioned herein was, a governmental agency
21 and political subdivision of the State of California, formed and existing under the California Fish
22 and Game Code, with its principal place of business in the County of Sacramento. Respondent is
23 a responsible agency under CEQA and is the public agency responsible for consideration of the
24 EIR and final action on DWR’s application for an ITP pursuant to the California Endangered
25 Species Act (Fish & G. Code, § 2050 et seq.).

26 17. Petitioners do not know the true names and capacities, whether individual,
27 corporate, associate, or otherwise, of Real Parties in Interest DOE 1 through DOE 50, inclusive,
28 and therefore sue said Real Parties in Interest under fictional names. Petitioners allege, upon

1 information and belief, that each fictionally named Real Party in Interest is responsible in some
2 manner for committing the acts upon which this action is based or has material interests affected
3 by the Project or Respondents' actions in connection with the Project. Petitioners will amend this
4 Petition to show the true names and capacities of DOES 1-50 if and when the same have been
5 ascertained.

6 JURISDICTION AND VENUE

7 18. This Court has jurisdiction to review Respondents' findings, approvals, and
8 actions and issue a writ of mandate and/or injunctive relief, as well as other relief sought herein,
9 pursuant to Code of Civil Procedure sections 525 et seq., 1060, 1085, and 1094.5 and Public
10 Resources Code sections 21168 and 21168.5.

11 19. Venue for this action properly lies in the Fresno County Superior Court under
12 Code of Civil Procedure section 401, because Respondents DWR and CDFW are agencies of the
13 State of California, and the Attorney General has an office in Fresno County. Venue also is
14 proper under Code of Civil Procedure section 395 because extensive environmental impacts of
15 the Project will occur in Fresno County.

16 20. Petitioners have complied with the requirements of Public Resources Code
17 section 21167.5 by serving a written notice of Petitioners' intention to commence this action on
18 April 28, 2020. A copy of the written notice and proof of service is attached hereto as **Exhibit B**.

19 21. Petitioners have complied with the requirements of Public Resources Code
20 section 21167.6(a) by concurrently filing a Notice of Election to Prepare the Record of
21 Proceedings relating to this action.

22 22. Petitioners have complied with the requirements of Public Resources Code
23 section 21167.7 by sending a copy of this Petition to the California Attorney General on April 28,
24 2020. A copy of the Notice is attached hereto as **Exhibit C**.

25 EXHAUSTION OF ADMINISTRATIVE REMEDIES

26 23. Petitioners have performed all conditions precedent to filing this action and have
27 exhausted the available administrative remedies to the extent required by law. Petitioners
28 presented their specific objections to Respondents' decisions through detailed written comments

1 submitted to Respondents either independently, as signatories, or through their member
2 organizations, on the Notice of Preparation, the Draft EIR, the Final EIR, and ITP Application,
3 requesting compliance with CEQA, including completion of full and adequate environmental
4 review. Petitioners actively participated in the administrative process that preceded certification
5 of the EIR and issuance of the ITP, to the extent Respondents' dismissive approach to
6 proceedings allowed such participation. All other or further requests of Respondents, including
7 those previously been made, are futile.

8 24. Petitioners have fully exhausted all administrative remedies in that the
9 determinations by DWR and CDFW are final and no further administrative appeal procedures are
10 provided by state or local law.

11 STANDING

12 25. As described above, Petitioners are beneficially interested in the subject matter of
13 this proceeding because implementation of the Project and ITP may adversely affect the
14 availability of surface and groundwater supplies that Petitioners rely on for irrigation and
15 municipal and other uses. Furthermore, to maintain and enhance their operations, Petitioners rely
16 on the health and survival of the ecosystem and environmental resources in the areas where
17 Petitioners and their member organizations or customers are located, including fish, wildlife, and
18 agricultural resources. Petitioners and their member organizations or customers will be directly
19 injured by Respondents' failure to comply with CEQA in connection with the Project and ITP, as
20 Petitioners' operations will be impacted by significant environmental effects that have not been
21 adequately disclosed, analyzed, or mitigated.

22 26. Petitioners have standing in the public interest because this case involves public
23 rights and the enforcement of public duties. As lead and responsible agencies, DWR and CDFW
24 have a mandatory duty to comply with the procedural and substantive requirements of CEQA.
25 Petitioners are not seeking relief greater than or different from relief sought for the general public.
26 If successful, this action would enforce the mandates of CEQA, including the public's right to
27 adequate and informative environmental review under that statute.

28 27. Petitioners filed the claims alleged in this Petition prior to the expiration of any

1 applicable statute of limitations, in compliance with Public Resources Code section 21167, as this
2 action was brought within 30 days of DWR's Notice of Determination.

3 **ATTORNEYS' FEES**

4 28. In seeking to compel Respondents to lawfully discharge their mandatory public
5 duties, Petitioners are acting in their capacity as private attorneys general in the interest and for
6 the benefit of the public pursuant to Code of Civil Procedure section 1021.5, and any other
7 applicable legal theory, to enforce important rights affecting the public interest. Issuance of the
8 relief requested in this Petition will constitute a significant public benefit by requiring
9 Respondents to carry out their duties as lead and responsible agencies under CEQA in compliance
10 with the law.

11 29. Further, Petitioners bring this action on the basis, among other things, that
12 Respondents' actions in connection with the Project and ITP were and continue to be arbitrary
13 and capricious. Pursuant to Government Code section 800 and other applicable laws, Petitioners
14 are entitled to reasonable attorneys' fees for bringing this action to redress Respondents' arbitrary
15 and capricious actions in connection with the Project.

16 **INADEQUATE REMEDY AT LAW – STAY AND INJUNCTION**

17 30. Under Code of Civil Procedure sections 526, 1085, and 1094.5 and Public
18 Resources Code sections 21168 and 21168.5, the Court may stay or enjoin operation of any
19 administrative decision or order involved in this proceeding.

20 31. Because Respondents, as lead and responsible agencies under CEQA, have
21 approved the Project and ITP, there is a real threat that Respondents will proceed to implement
22 the Project and ITP despite inadequate environmental review of the impacts of those actions.
23 Given Respondents' violations of CEQA by certifying the EIR and approving the Project and
24 issuing the ITP in reliance on that unlawfully certified EIR, any action to implement the Project
25 and ITP is null and void. Petitioners have no plain, speedy, or adequate remedy at law for the
26 irreparable harm that would result from Respondents' implementation of the Project and ITP. A
27 stay or preliminary or permanent injunction is necessary to restrain DWR and CDFW from taking

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1 additional actions to implement the Project and ITP until Respondents have complied with
2 CEQA.

3 32. A stay or injunction of Respondents' actions relating to the Project and ITP would
4 not be against the public interest because DWR and CDFW are required to conduct adequate
5 environmental review of the Project and ITP prior to approval, because operation of the Project
6 and reliance on the ITP would likely have significant impacts on the environment, and because
7 Respondents will not be harmed by a stay or injunction.

8 GENERAL ALLEGATIONS

9 33. The SWP is a water storage and delivery system of reservoirs, aqueducts, power
10 plants, and pumping plants extending more than 700 miles – two-thirds the length of California.
11 Planned, constructed, and operated by Respondent DWR, the SWP supplies water to more than
12 27 million people in northern California, the Bay Area, the San Joaquin Valley, the Central Coast,
13 and southern California.

14 34. The SWP was designed to deliver nearly 4.2 million acre-feet of water per year.
15 Water is received by 29 long-term SWP water supply contractors that in turn distribute SWP
16 water to farms, homes, and industry. The quantity of available SWP water supply depends on
17 rainfall, snowpack, runoff, water in storage facilities, and pumping capacity from the Delta, as
18 well as operational constraints for fish and wildlife protection, water quality, and environmental
19 and legal restrictions.

20 35. DWR operates the SWP in cooperation with the Reclamation's operation of the
21 CVP, pursuant to a Coordinated Operations Agreement ("COA"). One of the primary goals of
22 this cooperation is to limit salinity intrusion into the Sacramento-San Joaquin Delta and Suisun
23 Marsh.

24 36. On April 19, 2019, DWR issued a Notice of Preparation of an Environmental
25 Impact Report and Scoping Meetings for the Long-Term Operation of the California State Water
26 Project, and during the period from April 22 through May 27, 2019, accepted written comments
27 regarding the issues that should be addressed in the EIR.

28 37. Despite the complexity and statewide significance of the environmental issues

1 presented by DWR’s proposed action, it hurriedly issued the Draft EIR fewer than six months
2 later, on November 21, 2019, acknowledging that the Draft EIR was intended to support decisions
3 regarding ongoing SWP operations that appear to have already been made.

4 38. The Draft EIR was circulated for public review from November 21, 2019 through
5 January 6, 2020. After the Draft EIR was released for public review, on December 13, 2019,
6 DWR submitted an application to CDFW for an ITP for the Project (“ITP Application”). The ITP
7 Application proposed different and additional elements of SWP operations not described in the
8 Draft EIR project description. Numerous interested parties, including Petitioners, Reclamation,
9 and other entities submitted detailed comment letters urging DWR to address significant
10 environmental issues that had been ignored in the fundamentally deficient Draft EIR. These
11 defects stemmed largely from inconsistencies between the Project as described in the Draft EIR
12 and DWR’s ITP Application, insufficient information about elements of the Project both as
13 described in the Draft EIR and as DWR proposed to modify the Project through the ITP
14 Application, and DWR’s refusal to meaningfully consult and coordinate with Reclamation,
15 resulting in foundational problems with the EIR’s baseline for assessment of environmental
16 impacts, environmental setting, project description, and other key areas of analysis.

17 39. On or about March 17, 2020, DWR provided certain public agencies with an
18 administrative Final EIR, including responses to comments by those public agencies responding
19 to the Draft EIR. Some Petitioners and/or their member agencies objected to the adequacy of the
20 proposed responses to their comments, to the EIR’s adequacy and to the Project as described in
21 the administrative Final EIR, in written comments provided to DWR prior to March 27, 2020.
22 Notwithstanding these objections, on March 27, 2020, DWR adopted Findings of Fact and
23 certified a Final EIR for the Project. On March 30, 2020, DWR filed a Notice of Determination
24 (“NOD”) with the State Clearinghouse pursuant to CEQA.

25 40. The Final EIR certified by DWR materially revised what had been identified as
26 “Alternative 2B” in the Draft EIR, effectively creating a new alternative, which DWR labeled as
27 the “Refined Alternative 2b.” Although DWR characterized its changes to Alternative 2B as
28 refinements, the lead agency cherry-picked elements from a range of options and combined them

1 into an entirely new Project not reflected, and not fairly and adequately described or analyzed, in
2 the Draft EIR circulated for public review. The Final EIR also failed to squarely address or
3 resolve other significant issues identified in comments on the Draft EIR or on the administrative
4 draft Final EIR.

5 41. On March 31, 2020, in reliance on DWR's certified Final EIR, Respondent CDFW
6 adopted Findings of Fact and issued DWR ITP Number 2081-2019-066-00 in connection with
7 "Refined Alternative 2b." This action violated CDFW's duties as a responsible agency to
8 independently review and approve the CEQA document for the proposed action and not
9 reflexively rely on the lead agency's judgments.

10 **FIRST CAUSE OF ACTION**

11 **(Violations of CEQA Against All Respondents – Inadequacy of EIR as Informational**
12 **Document)**

13 42. Petitioners reallege and incorporate by reference each and every allegation set
14 forth above.

15 43. CEQA requires an agency to analyze the potential environmental impacts of its
16 proposed actions in an EIR. The purpose of an EIR is to provide public agencies and the public
17 in general with detailed information about the likely effects of a proposed project on the
18 environment. (Pub. Resources Code, § 21061.) An EIR must fully analyze and disclose all of the
19 project's potentially significant environmental effects. (Pub. Resources Code, § 21100(b)(1).)
20 To be considered adequate, an EIR must, at a minimum, provide a sufficient degree of analysis
21 and information to enable decision-makers to take action that intelligently accounts for
22 environmental consequences. (CEQA Guidelines, § 15151.)

23 44. In addition to full disclosure and analysis of the environmental effects of the
24 proposed action, CEQA also requires lead agencies, such as Respondent DWR, to identify
25 effective and enforceable mitigation measures to avoid or substantially lessen the proposal's
26 adverse impacts; to consider a range of alternatives and to implement them where feasible; to
27 make adequate findings, including a statement of overriding considerations for those significant
28 environmental impacts that cannot be avoided; and to do all of these things meaningfully and in

1 good faith, in a public forum, before the agency’s decision is made. Respondent DWR, as lead
2 agency, violated CEQA by failing to comply with these requirements, by failing to proceed in the
3 manner required by law, by certifying an EIR that failed to minimally serve its informational
4 purposes, and by making findings not supported by substantial evidence.

5 45. Respondent CDFW, as a responsible agency, violated CEQA and prejudicially
6 abused its discretion by failing to exercise its independent judgment regarding the adequacy of
7 the EIR, including failing to determine the necessity, effectiveness, feasibility, and
8 constitutionality of mitigation measures and alternatives capable of avoiding or substantially
9 lessening the Project’s significant impacts, failing to proceed in the manner required by law, and
10 making findings not supported by substantial evidence.

11 46. Respondents ignored the substance of significant environmental and other
12 concerns raised by Petitioners and others during the administrative process and proceeded to
13 certify and rely upon a fundamentally inadequate EIR to support decisions already made
14 concerning the Project and ITP, in violation of Respondents’ mandatory duties under CEQA as
15 lead and responsible agencies. (Pub. Resources Code, §§ 21168, 21168.5.)

16 **SECOND CAUSE OF ACTION**

17 **(Violations of CEQA Against Respondent DWR – Failure to Consult with Reclamation)**

18 47. Petitioners reallege and incorporate by reference each and every allegation set
19 forth above.

20 48. A lead agency preparing an EIR must notify and seek input from all responsible
21 and trustee agencies, including appropriate federal agencies, regarding “the scope and content of
22 the information that is germane to the statutory responsibilities” of that agency in connection with
23 the proposed project. (Pub. Resources Code, §§ 21080.4(a), 21092; CEQA Guidelines,
24 § 15082(a), (b).) Before completing an EIR, the lead agency must again consult with and invite
25 comments from all responsible and trustee agencies, including any federal agency that has
26 jurisdiction by law with respect to the project or exercises authority over resources that may be
27 affected by the project. (Pub. Resources Code, §§ 21104(a), 21153(a); CEQA Guidelines,
28 § 15086.)

1 49. On November 22, 2019, Respondent DWR issued its Draft EIR for the Project in
2 which it noted Reclamation’s operation of the CVP in coordination with DWR’s operation of the
3 SWP under the terms of the COA. Throughout the Draft EIR, Respondent DWR acknowledged a
4 multitude of instances in which Project implementation requires coordination with Reclamation,
5 but it consistently characterized those efforts in the future tense, deferring any meaningful
6 analysis of coordinated operations by using terms such as “will” and “would.”

7 50. Despite the critical nature of required coordination between the two agencies,
8 Respondent DWR did not: (1) coordinate with Reclamation on the development of the Draft EIR;
9 or (2) as of the date of Reclamation’s comments on the Draft EIR, initiate discussions with
10 Reclamation on the manner in which the SWP operations contemplated in the EIR would be
11 coordinated with Reclamation’s planned operations for the CVP. Reclamation’s January 6, 2020
12 comment letter explains:

13 Overall, the DEIR lacks necessary details and does not adequately
14 describe how [Respondent] and Reclamation’s proposed operations
15 of the Central Valley Project and the California State Water Project
16 will work in concert. Since the DEIR was developed in an absence
17 of dialogue with Reclamation, it is speculative to draw conclusions
 about how the differences in proposed joint operation between the
 [Environmental Impact Statement] and DEIR will be resolved, and
 the resulting environmental conditions are therefore unknown.
 (DEIR, Letter F-Reclamation-1)

18 51. Reclamation recognized, in its January 6, 2020, letter, that the Project’s proposed
19 alternatives will result in different operational parameters for the CVP and SWP making
20 implementation of the agencies’ “mutual obligations for the coordinated operations challenging
21 under the critical Coordinated Operations Agreement.” (DEIR, Letter F-Reclamation-1.)
22 Because the Draft EIR contained new obligations for the SWP, which impact Reclamation
23 because of the Projects’ coordinated operations, CEQA required DWR to describe how these
24 obligations would be met and to analyze the environmental effects of doing so. As comments on
25 the Draft EIR pointed out, “[w]ithout an understanding of how the new obligations included in
26 the DEIR would be met and accounted for (which would create different objectives on the same
27 system), the impacts of these actions on both the Central Valley Project and [State Water Project]
28 cannot be analyzed.”

1 52. Reclamation’s comments on the Draft EIR provided a detailed breakdown of the
2 crucial factors DWR failed to address, including, but not limited to, the following:

- 3 (a) the Project’s additional outflow requires an accounting under the COA to
4 understand effects on CVP operations and to disclose and analyze resulting
5 environmental impacts;
- 6 (b) an adequate EIR must identify effects on CVP reservoir operations,
7 including effects related to river temperatures or water supplies;
- 8 (c) the CalSim model did not accurately represent how Reclamation would
9 operate the CVP and thus distorted the resulting environmental analysis
10 and conclusions;
- 11 (d) DWR has predicated implementation of the Project on Reclamation
12 providing additional Delta outflow, but this additional output has not been
13 provided, and therefore may not occur as intended;
- 14 (e) implementation of the Project could affect the CVP’s ability to deliver
15 water and the resulting significant environmental impacts are not described
16 in the EIR; and
- 17 (f) Reclamation concluded that coordination between it and Respondent DWR
18 is critical, and “[o]perating to different criteria creates challenges for both
19 real-time operations and seasonal long-term planning.” DWR nevertheless
20 refused to coordinate with Reclamation before proceeding to approve the
21 Project.

22 53. Respondent DWR’s failure to meaningfully consult and coordinate with
23 Reclamation resulted in omission of “material necessary to informed decisionmaking and
24 informed public participation. Case law is clear that, in such cases, the error is prejudicial.”
25 (*Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 957.) Respondent DWR’s inaction
26 violated the requirements of CEQA, and is prejudicial as a matter of law.

27 54. Respondent DWR’s failure to meaningfully consult with Reclamation also renders
28 the EIR substantively deficient in innumerable ways. DWR could not and did not provide basic

1 information necessary to establish the existing environmental setting; describe all essential
2 elements of the Project and evaluate a reasonable range of alternatives; analyze their reasonably
3 foreseeable direct, indirect, and cumulative environmental impacts; or enable the agencies to
4 formulate effective mitigation measures. As a result, the EIR fails to satisfy its basic
5 informational purposes because it does not fairly or accurately describe how the Project will be
6 operated, and it does not disclose or mitigate the impacts that will result from such operations.

7 55. Numerous Project elements unlawfully assume future coordination between DWR
8 and Reclamation, because DWR asserts it cannot reasonably foresee how Reclamation might
9 operate the CVP with the Project in place and that impacts outside the narrow geographic scope
10 of the EIR somehow are “speculative.” DWR’s assertions are not supported by substantial
11 evidence, however, and violate CEQA’s requirements that the lead agency “use its best efforts to
12 find out and disclose all that it reasonably can” to adequately describe important elements of the
13 project and to analyze the impacts of its implementation. (CEQA Guidelines, §§ 15144, 15378;
14 *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210,
15 242.) This duty extends to analysis and disclosure of all direct, reasonably foreseeable indirect,
16 and cumulative impacts of project implementation, whether or not they occur within the lead
17 agency’s jurisdiction. (Pub. Resources Code, §§ 21065, 21100; CEQA Guidelines, § 15355.)

18 56. DWR’s failure to take even minimally necessary steps to comply with its duties as
19 lead agency violates CEQA. DWR failed to proceed in the manner required by law and
20 prejudicially abused its discretion in certifying the EIR and approving the Project.

21 **THIRD CAUSE OF ACTION**

22 **(Violations of CEQA Against Respondent DWR – Inadequate and Unstable Project** 23 **Description)**

24 57. Petitioners reallege and incorporate by reference each and every allegation set
25 forth above.

26 58. CEQA requires an EIR to include an accurate, stable, and consistent description of
27 the proposed Project. (CEQA Guidelines, § 15124.) The Project description must contain

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1 specific information about the basic components of the proposed activity to allow a complete
2 assessment of its environmental impacts.

3 59. In violation of CEQA, the EIR’s project description lacks basic information as to
4 how the SWP will be coordinated with Reclamation’s operation of the CVP, as analyzed in the
5 biological opinions issued in October 2019 by the U.S. Fish and Wildlife Service and the National
6 Marine Fisheries Service under the federal Endangered Species Act. Instead, the EIR purports to
7 artificially narrow the geographic scope of the Project and omits discussion of potential impacts
8 north of the Delta and to CVP operations and water supplies because DWR allegedly “cannot
9 reasonably foresee how Reclamation might respond to” SWP operations. Elsewhere, however,
10 DWR acknowledges that it “operates the SWP in coordination with the CVP, under the
11 Coordinated Operation Agreement (COA) between the federal government and the State of
12 California (authorized by Public Law 99-546)” (Draft EIR, p. 1-3), and the proposed project
13 operations largely assume extensive coordination with Reclamation. (See, e.g., Draft EIR, pp. 3-
14 18 – 3-38 [OMR Management].) The Draft EIR refers to “proportional share” of requirements
15 and “equitable” coordination between SWP and CVP operations but fails to define either term,
16 fails to describe whether and how requirements imposed only on the SWP constitute coordination
17 between the SWP and CVP, and fails to describe whether and how CVP operations are affected.
18 This lack of basic information makes it impossible to analyze and mitigate potentially significant
19 impacts of the Project.

20 60. To meaningfully describe the Project, including the ITP, and its potential
21 alternatives as CEQA requires, the details of coordination between SWP and CVP facilities
22 cannot be merely implied or inferred. (CEQA Guidelines, §§ 15124(c), 15378; *Sierra Club v.*
23 *City of Orange* (2008) 163 Cal.App.4th 523, 535.) DWR’s artificially narrow scope of analysis
24 lacks sufficient detail about how changes to SWP operations under the Project and ITP will result
25 in changes to upstream operations for both the SWP and the CVP. The EIR did not analyze the
26 resulting environmental effects of such changes, identify mitigation measures, or consider
27 alternative approaches. The EIR failed to provide enough detail regarding the “whole of the

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1 action” and its potential impacts, particularly in connection with “Refined Alternative 2b” and the
2 ITP, to foster meaningful public participation and informed agency decision-making.

3 61. Moreover, “an accurate, stable and finite project description is the *sine qua non* of
4 an informative and legally sufficient EIR.” (*San Joaquin Raptor Rescue Ctr. v. County of Merced*
5 (2007) 149 Cal.App.4th 645, 655, quoting *County of Inyo v. City of Los Angeles* (1977) 71
6 Cal.App.3d 185, 199.) “A curtailed, enigmatic or unstable project description draws a red herring
7 across the path of public input.” (*County of Inyo, supra*, 71 Cal.App.3d at p. 198.) “[O]nly
8 through an accurate view of the project may the public and interested parties and public agencies
9 balance the proposed project’s benefits against its environmental cost, consider appropriate
10 mitigation measures, assess the advantages of terminating the proposal and properly weigh other
11 alternatives....” (*San Joaquin, supra*, 149 Cal.App.4th at p. 655, quoting *City of Santee v. County*
12 *of San Diego* (1989) 214 Cal.App.3d 1438, 1454.)

13 62. An EIR that describes one project but analyzes another does not meet CEQA’s
14 basic objectives of promoting informed decision-making. (*County of Inyo, supra*, 71 Cal.App.3d
15 at p. 197 [EIR’s “incessant shifts among different project descriptions . . . vitiate the city’s EIR
16 process as a vehicle for intelligent public participation”]; see also *W. Placer Citizens for an Agric.*
17 *& Rural Env’t v. County of Placer* (2006) 144 Cal.App.4th 890, 898 [the project analyzed must
18 be consistent with the project description, “[t]he defined project and not some different project
19 must be the EIR’s bona fide subject”].)

20 63. Here, not only is the EIR’s project description lacking in basic information about
21 the proposed activity, but it materially changed between the outset of the environmental review
22 process including circulation of the Draft EIR, and DWR’s hurried certification of the Final EIR,
23 approval of the Project, and CDFW’s issuance of the ITP. The Draft EIR describes a project that
24 is materially different from the Project described in DWR’s ITP Application, the Final EIR, and
25 ultimately the ITP. The Final EIR substantially revised what had been “Alternative 2B” in the
26 Draft EIR and effectively created a new alternative labeled “Refined Alternative 2b.” Refined
27 Alternative 2b significantly departs from the original Alternative 2B, because DWR improperly
28 combined several different approaches to essential components of the proposed activity, resulting

1 – at the 11th hour – in an entirely new project not reflected, and not fairly and adequately
2 described or analyzed, in the earlier Draft EIR. None of the project alternatives analyzed in the
3 Draft EIR included all essential features Respondents approved with the label “Refined
4 Alternative 2B.”

5 64. As a result of the EIR’s inadequate and unstable project description, DWR
6 improperly deferred analysis of the impacts of this hybrid action and reached impact conclusions
7 not supported by substantial evidence, in violation of CEQA’s basic requirements. (Pub.
8 Resources Code, §§ 21168, 21168.5.) DWR further failed to identify feasible and effective
9 measures to mitigate the impacts of its action, failed to meaningfully evaluate alternatives,
10 adopted Findings of Fact unsupported by substantial evidence, and failed to bridge the analytical
11 gap between evidence in the record and the agency’s decision. (Pub. Resources Code, § 21002,
12 21156; CEQA Guidelines, § 15091.) Respondent DWR’s failure to provide an adequate and
13 stable project description with all required information about the proposed activity constitutes a
14 failure to proceed in the manner required by law and is a prejudicial abuse of discretion in
15 violation of CEQA.

16 **FOURTH CAUSE OF ACTION**

17 **(Violations of CEQA Against Respondent DWR – Inadequate Description of Environmental** 18 **Setting)**

19 65. Petitioners reallege and incorporate by reference each and every allegation set
20 forth above.

21 66. An EIR must include a description of the environmental setting of the project, or
22 “baseline,” against which potential impacts are compared to determine whether they are
23 significant. (CEQA Guidelines, § 15125(a); *Neighbors for Smart Rail v. Exposition Metro Line*
24 *Constr. Auth.* (2013) 57 Cal.4th 439, 447.) Proper characterization of the baseline is essential to
25 proper characterization and evaluation of the impacts of the project. (*Save Our Peninsula Comm.*
26 *v. Monterey Cty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119.)

27 67. Respondent DWR violated CEQA, failed to proceed in the manner required by
28 law, and prejudicially abused its discretion in certifying the EIR and approving the Project

1 because the EIR failed to describe existing conditions upstream of the Delta, an area that will be
2 adversely affected by the Project and ITP. The EIR unlawfully omitted basic information and
3 analysis necessary for informed public participation and agency decision-making.

4 **FIFTH CAUSE OF ACTION**

5 **(Violations of CEQA Against Respondent DWR – Failure to Analyze and Disclose Impacts**
6 **on CVP Operations, Water Supplies, Groundwater Resources, and Aquatic Species)**

7 68. Petitioners reallege and incorporate by reference each and every allegation set
8 forth above.

9 69. To comply with CEQA, an EIR must be “prepared with a sufficient degree of
10 analysis to provide decision makers with information which enables them to make a decision
11 which intelligently takes account of environmental consequences.” (CEQA Guidelines, § 15151.)
12 An EIR is fatally deficient if it “omits material necessary to informed decisionmaking and
13 informed public participation.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515.)

14 70. CEQA further requires consideration of both short-term and long-term impacts and
15 a “good faith effort at full disclosure” of those impacts. (CEQA Guidelines, § 15151; see also *id.*
16 § 15126.2(a); *San Joaquin, supra*, 149 Cal.App.4th at p. 660.) These impacts must also be
17 discussed and analyzed to determine the “cumulative effect on the environment of the subject
18 project in conjunction with other closely related past, present and reasonably foreseeable probable
19 future projects.” (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27
20 Cal.App.4th 713, 719; CEQA Guidelines, §§ 15063(b)(1), 15355.) The cumulative impacts of a
21 project can “appear insignificant when considered individually, but assume threatening
22 dimensions when considered collectively with other sources with which they interact.”

23 (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 114, disproved
24 on another ground in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Ca.4th 1086.)

25 71. Respondent DWR violated CEQA in certifying the Final EIR and approving the
26 Project because the EIR failed to analyze reasonably foreseeable significant direct, indirect, and
27 cumulative impacts, including, but not limited to, impacts on CVP operations, water supplies,
28 groundwater resources, and aquatic species resulting from operational changes such as reduction

1 of water deliveries, increased upstream releases and Sacramento River flow in May, increases in
2 Yolo Bypass flow due to an increase in upstream reservoir spills in December through March,
3 reduced flow in the Sacramento River below Keswick in September and November of wet years,
4 and reduced Shasta storage in certain year types from June through December. The analysis
5 failed to adequately consider effects on the CVP related to its ability to achieve certain water
6 temperature actions (coldwater management in CVP reservoirs) and failed to provide any
7 mitigation for such impacts; notwithstanding the fact that the Project and alternatives could affect
8 coordinated operations between the SWP and the CVP and thus could negatively affect CVP
9 operations, which could have significant adverse environmental impacts.

10 72. DWR's failure to analyze the reasonably foreseeable direct, indirect, and
11 cumulative impacts of the Project violated CEQA. DWR failed to proceed in the manner required
12 by law and prejudicially abused its discretion in certifying the EIR and approving the Project.

13 **SIXTH CAUSE OF ACTION**

14 **(Violations of CEQA Against Respondent DWR – Failure to Adequately Respond to** 15 **Comments)**

16 73. Petitioners reallege and incorporate by reference each and every allegation set
17 forth above.

18 74. CEQA requires the lead agency to provide “good faith, reasoned analysis in
19 response” to comments on the Draft EIR, and “[c]onclusory statements unsupported by factual
20 information will not suffice.” (CEQA Guidelines, § 15088(c).) In particular, where comments
21 from responsible experts disclose new or conflicting data or opinions that cause concern that the
22 lead agency may not have fully evaluated the project and its alternatives, these comments may not
23 simply be ignored.

24 75. Respondent DWR failed to respond to numerous comments raising significant
25 environmental concerns regarding the lack of information in the Draft EIR. Petitioners and other
26 commenters on the Draft EIR raised concerns regarding the adequacy of the EIR's project
27 description, baseline, and environmental setting; the modeling that formed the basis of the EIR's
28 analysis and impact conclusions; the need for and adequacy of mitigation measures; the

1 description and evaluation of alternatives; and other significant issues that exposed the overall
2 inadequacy of the EIR as an informational document.

3 76. The Final EIR’s responses to comments, including master responses, consist
4 primarily of boilerplate language and summaries of CEQA requirements that sidestep the specific
5 issues raised in comments on the Draft EIR. As Petitioners and others subsequently explained in
6 comments on the Final EIR, these responses are inadequate and violate CEQA because they do
7 not squarely respond to the significant and specific environmental concerns Petitioners and other
8 commenters raised. (CEQA Guidelines, § 15088(b); *Covington v. Great Basin Unified Air*
9 *Pollution Control Dist.* (2019) 43 Cal.App.5th 867.)

10 77. Despite these concerns, DWR did not revise the EIR to correct its fundamental
11 deficiencies. DWR ignored the substance of nearly all the comments on the Draft EIR and Final
12 EIR; instead the lead agency responded, if at all, with conclusory statements unsupported by
13 substantial evidence in the record and that do not reflect a good-faith, reasoned response. In this
14 way, DWR again violated CEQA, failed to proceed in the manner required by law, and
15 prejudicially abused its discretion in certifying the EIR and approving the Project.

16 **SEVENTH CAUSE OF ACTION**

17 **(Violations of CEQA Against Respondent DWR – Failure to Recirculate)**

18 78. Petitioners reallege and incorporate by reference each and every allegation set
19 forth above.

20 79. CEQA requires that if significant new information is added to an EIR after notice
21 of public review is given but before final certification of the EIR, the lead agency must issue a
22 new notice and recirculate the revised draft EIR for public comment and public agency
23 consultation. (CEQA Guidelines, § 15088.5(a).) New information that triggers the recirculation
24 requirement may include changes in the project as well as evidence of a new, or substantially
25 more severe, significant impact. (*Ibid.*) Recirculation is also required when the draft EIR was
26 “so fundamentally and basically inadequate and conclusory in nature” that public comment on the
27 draft EIR was essentially meaningless. (*Ibid.*)

28 80. As demonstrated in the comments of Petitioners and others on the Draft EIR,

1 DWR was required to revise and recirculate the EIR due to the significant changes in the Project
2 between the Draft and Final EIRs and the fundamental inadequacy of both the Draft EIR and the
3 Final EIR certified by DWR.

4 81. DWR failed to recirculate the EIR or any portion of the EIR as required by CEQA.
5 As a result, Petitioners, the public, and other public agencies were deprived of a meaningful
6 opportunity to review and comment on the approved Project and its substantial adverse
7 environmental consequences. By failing to revise and recirculate the EIR, DWR failed to proceed
8 in the manner required by law, and its decision to approve the Project was not supported by
9 substantial evidence.

10 **EIGHTH CAUSE OF ACTION**

11 **(Violations of CEQA Against All Respondents – Insufficient Findings)**

12 82. Petitioners reallege and incorporate by reference each and every allegation set
13 forth above.

14 83. CEQA Guidelines section 15091(a) requires a lead agency to make specific written
15 findings for each significant effect identified in an EIR. Specifically, the agency must make one
16 of three findings: (1) that changes or alterations have been required in, or incorporated in, the
17 project that avoid or substantially lessen the significant environmental effect; (2) that such
18 changes or alterations are within the responsibility and jurisdiction of another public agency, and
19 that such changes have been adopted or can and should be adopted by that agency; or (3) specific
20 economic, legal, social, technological, or other considerations make infeasible the mitigation
21 measures or project alternatives identified in the EIR. These findings must be supported by
22 substantial evidence in the administrative record. (CEQA Guidelines, § 15091(b).)

23 84. CEQA likewise requires a responsible agency to independently consider the
24 information in the EIR prepared by the lead agency and reach its own conclusions on whether and
25 how to approve the project involved. (CEQA Guidelines, § 15096.) Thus, as a responsible
26 agency under CEQA, CDFW was required to make the findings required by CEQA Guidelines
27 section 15091 for each significant effect of the Project, including findings as to any feasible
28 alternative or feasible mitigation measures within its responsibility that would substantially lessen

1 or avoid any significant effect the Project would have on the environment, and its findings must
2 be supported by substantial evidence in the administrative record. (CEQA Guidelines,
3 § 15091(b).)

4 85. Neither DWR's nor CDFW's findings in support of certification of the EIR,
5 approval of the Project and issuance of the ITP are supported by substantial evidence in the
6 record. These deficiencies include, but are not limited to, the following:

- 7 (a) Findings regarding the feasibility of alternatives;
- 8 (b) The finding that the Project is the environmentally superior alternative;
- 9 (c) The findings regarding environmental impacts, including, but not limited
10 to, surface water and groundwater supply impacts, including the scope and
11 significance of impacts and the necessity, constitutionality, effectiveness,
12 and feasibility of mitigation; and
- 13 (d) The findings regarding aquatic resources and other biological impacts,
14 including the scope and significance of impacts and the effectiveness of
15 mitigation.

16 86. The EIR fails to disclose the true scope of the Project impacts, including, but not
17 limited to, impacts to surface water and groundwater supply and aquatic and other biological
18 resources.

19 87. As lead agency and a responsible agency under CEQA, respectively, Respondents
20 DWR and CDFW made findings that are not supported by substantial evidence, and therefore
21 approval of the Project and ITP based upon those findings constitutes a failure to proceed in the
22 manner required by law and is a prejudicial abuse of discretion.

23 **NINTH CAUSE OF ACTION**

24 **(Violations of CEQA Against All Respondents – EIR Inadequate for Responsible Agency**
25 **Approvals)**

26 88. Petitioners reallege and incorporate by reference each and every allegation set
27 forth above.

28 89. As detailed herein, DWR failed to comply with CEQA in connection with the

1 preparation and certification of the EIR. DWR has failed to proceed in the manner required by
2 law, and its conclusions and findings are not supported by substantial evidence. These prejudicial
3 abuses of discretion render the EIR inadequate to support DWR's approval of the Project as well
4 as related approvals.

5 90. Similarly, the prejudicial abuses of discretion described herein render the EIR
6 inadequate under CEQA for purposes of responsible agency approvals, including Respondent
7 CDFW's approval of the ITP. The EIR simply fails as an informational document and cannot
8 support the approval of any permit or project.

9 91. The EIR is inadequate to support issuance of the ITP in a variety of respects,
10 including, but not limited to, its failure to analyze impacts on CVP operations, water supplies,
11 groundwater resources, and aquatic species resulting from operational changes such as reduction
12 of water deliveries; increased upstream releases and Sacramento River flow in May; increases in
13 Yolo Bypass flow due to an increase in upstream reservoir spills in December through March,
14 without addressing the effects; reduced flow in the Sacramento River below Keswick in
15 September and November of wet years; and reduced Shasta storage in certain year types from
16 June through December. The analysis failed to consider effects on the CVP related to
17 temperature impacts and failed to provide any mitigation for such impacts. These actions could
18 substantially affect coordinated operations between the SWP and the CVP and could negatively
19 affect CVP operations and coldwater management actions, and in turn have significant adverse
20 environmental impacts not analyzed in the EIR relied upon by DWR and CDFW.

21 92. For these reasons, among others, the flawed EIR is inadequate to support
22 responsible agency approval, and DWR and CDFW have prejudicially abused their discretion in
23 certifying and relying upon the EIR. Furthermore, DWR and CDFW made findings as to the
24 adequacy of the document for purposes of responsible agency approvals that are not supported by
25 substantial evidence.

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1 **TENTH CAUSE OF ACTION**

2 **(Violations of CEQA Against All Respondents – Improper Incorporation of Mitigation**
3 **Measures in Project Description; Inadequate Mitigation)**

4 93. Petitioners reallege and incorporate by reference each and every allegation set
5 forth above.

6 94. The primary purpose of the SWP is water supply. Consistent with that purpose,
7 the Project is DWR’s plan for the long-term operation of water storage and conveyance facilities,
8 including conveyance of water through the Sacramento-San Joaquin Delta.

9 95. To reduce impacts of SWP operations on aquatic species, and secure CDFW’s
10 approval of an ITP, the Project included a variety of new components that never have been part of
11 DWR’s operation of the SWP, including, but not limited to, the requirement that substantial
12 “blocks” of water (totaling up to 250,000 acre-feet in any given year) be dedicated to Delta
13 outflow (rather than SWP water service) and provisions for vague and unspecified SWP
14 operational decision-making by and at the sole discretion of CDFW. The EIR mischaracterized
15 what were plainly mitigation measures as Project components. This prevented the EIR from
16 appropriately analyzing the Project’s environmental impacts and potential mitigation measures,
17 including the impacts of the mitigation measures themselves.

18 96. To the extent the Project components are mitigation, they are legally inadequate
19 because they are vague, incomplete, untested, infeasible, and lack defined performance standards,
20 and constitute impermissible deferred mitigation.

21 **ELEVENTH CAUSE OF ACTION**

22 **(Failure to Evaluate a Reasonable Range of Alternatives)**

23 97. Petitioners reallege and incorporate by reference each and every allegation set
24 forth above.

25 98. When deciding whether to approve a proposed project with significant
26 environmental effects, agencies are required to consider and evaluate a reasonable range of
27 alternatives that offer environmental advantages over the proposed project and that may feasibly

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1 be accomplished in a successful manner. (CEQA Guidelines, § 15126.6(c), (d); see *Citizens of*
2 *Goleta Valley, et al. v. Board of Supervisors* (1990) 52 Cal. 3d 553, 566.)

3 99. The EIR failed to identify or analyze a reasonable range of alternatives, or to reject
4 alternatives based on infeasibility supported by substantial evidence. (Pub. Resources Code,
5 § 21081.5; CEQA Guidelines, § 15091(b), (c).)

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioners pray for judgment as follows:

8 1. For alternative and peremptory writs of mandate commanding Respondents to:

9 (a) vacate and set aside their March 27, 2020 and March 31, 2020 approvals of
10 the Project and ITP;

11 (b) satisfy all CEQA review requirements;

12 (c) suspend any and all activities related to the Project and its implementation
13 until CEQA has been satisfied;

14 2. For a stay, temporary restraining order, preliminary injunction, and permanent
15 prohibitory injunction prohibiting Respondents from pursuing, authorizing, undertaking,
16 implementing, or otherwise operating the SWP pursuant to their approval of the Project pending
17 completion of this litigation and full compliance with CEQA;

18 3. For Petitioners' costs of suit;

19 4. For Petitioners' reasonable attorneys' fees as authorized by Code of Civil
20 Procedure section 1021.5 and other provisions of law; and

21 5. For such relief as the Court may deem just and proper.

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Dated: April 28, 2020

STOEL RIVES LLP

By: 

Timothy M. Taylor
Elizabeth P. Ewens
Daniel L. Quinley
Attorneys for Petitioners and Plaintiffs
TEHAMA-COLUSA CANAL AUTHORITY; SAN
LUIS & DELTA-MENDOTA WATER AUTHORITY;
FRIANT WATER AUTHORITY; GLENN-COLUSA
IRRIGATION DISTRICT; RECLAMATION DISTRICT
108; NATOMAS CENTRAL MUTUAL WATER
COMPANY; RIVER GARDEN FARMS COMPANY;
and SUTTER MUTUAL WATER COMPANY

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VERIFICATION

I, Roger Cornwell, declare:

I am General Manager of River Garden Farms Company, a business entity existing under the laws of California, which is a Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

Executed at Knights Landing, California on April 28, 2020.



Name: Roger Cornwell
Title: General Manager

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VERIFICATION


I, Brad Mattson, declare:

I am General Manager of the Sutter Mutual Water Company, a water company organized and existing under the laws of California, which is a Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

Executed at Robbins, California on April 28, 2020.


Name: Brad Mattson
Title: General Manager

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VERIFICATION

I, Brett Gray, declare:

I am General Manager of the Natomas Central Mutual Water Company, a water company organized and existing under the laws of California, which is a Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

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

Executed at Rio Linda, California on April 28, 2020.

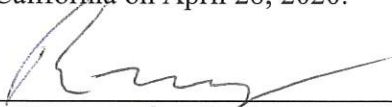

Name: Brett Gray
Title: General Manager

EXHIBIT A

**VERIFIED PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE RELIEF**

EXHIBIT A

- A. Members of the Friant Water Authority
1. Arvin Edison Water Storage District
 2. Chowchilla Water District
 3. City of Fresno
 4. Fresno Irrigation District
 5. Hills Valley Irrigation District
 6. Kaweah Delta Water Conservation District
 7. Kern-Tulare Water Conservation District
 8. Lindmore Irrigation District
 9. Lindsay-Strathmore Irrigation District
 10. Orange Cove Irrigation District
 11. Madera Irrigation District
 12. Porterville Irrigation District
 13. Saucelito Irrigation District
 14. Terra Bella Irrigation District
 15. Tulare Irrigation District
- B. Members of the San Luis & Delta-Mendota Water Authority
1. Banta-Carbona Irrigation District
 2. Broadview Water District
 3. Byron Bethany Irrigation District
 4. Central California Irrigation District
 5. City of Tracy
 6. Columbia Canal Company (a friend)
 7. Del Puerto Water District
 8. Eagle Field Water District
 9. Firebaugh Canal Water District
 10. Fresno Slough Water District
 11. Grassland Water District
 12. Henry Miller Reclamation District #2131
 13. James Irrigation District
 14. Laguna Water District
 15. Mercy Springs Water District
 16. Oro Loma Water District
 17. Pacheco Water District
 18. Panoche Water District
 19. Patterson Irrigation District
 20. Pleasant Valley Water District

The entities listed in this exhibit are provided for informational purposes only and are not parties to this litigation by virtue of their having been identified in this exhibit.

21. Reclamation District 1606
22. San Benito County Water District
23. San Luis Water District
24. Santa Clara Valley Water District
25. Tranquillity Irrigation District
26. Turner Island Water District
27. West Side Irrigation District
28. West Stanislaus Irrigation District
29. Westlands Water District

C. Members of the Tehama-Colusa Canal Authority

1. Colusa County Water District
2. Corning Water District
3. Cortina Water District
4. Davis Water District
5. Dunnigan Water District
6. 4M Water District
7. Glenn Valley Water District
8. Glide Water District
9. Holthouse Water District
10. Kanawha Water District
11. Kirkwood Water District
12. La Grande Water District
13. Myers-Marsh Mutual Water Company
14. Orland-Artois Water District
15. Proberta Water District
16. Thomes Creek Water District
17. Westside Water District
18. Glenn Valley Water District
19. Myers-Marsh Mutual Water Company

The entities listed in this exhibit are provided for informational purposes only and are not parties to this litigation by virtue of their having been identified in this exhibit.

EXHIBIT B



April 28, 2020

Karla Nemeth
Director
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Charlton H. Bonham
Director
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

Re: NOTICE OF COMMENCEMENT OF CEQA ACTION

Dear Ms. Nemeth and Mr. Bonham:

Pursuant to Public Resources Code section 21167.5, please take notice that the Tehama-Colusa Canal Authority, San Luis & Delta-Mendota Water Authority, Friant Water Authority, Glenn-Colusa Irrigation District, Reclamation District 108, Natomas Central Mutual Water Company, River Garden Farms Company, and the Sutter Mutual Water Company intend to file a petition for writ of mandate under the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) against the California Department of Water Resources (“DWR”) and California Department of Fish and Wildlife (“CDFW”).

The action will challenge DWR’s certification and reliance on a defective environmental impact report as the basis for DWR’s Long-Term Operation of the California State Water Project (the “Project”) and CDFW’s approval of an Incidental Take Permit for the Project. The petition will seek to vacate DWR’s and CDFW’s actions and approvals related to the Project. This action will be filed with the Fresno County Superior Court.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Timothy M. Taylor', is written over a white rectangular background.

Timothy M. Taylor
Elizabeth P. Ewens

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DECLARATION OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of Sacramento and my business address is 500 Capitol Mall, Suite 1600, Sacramento, California 95814.

On April 28, 2020, at Sacramento, California, I served the attached document(s):

NOTICE OF COMMENCEMENT OF CEQA ACTION

on the following parties:

Karla Nemeth
Director
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Charlton H. Bonham
Director
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

- BY FIRST CLASS MAIL:** I am readily familiar with my employer’s practice for the collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and mailing at the offices of Stoel Rives LLP, 500 Capitol Mall, Suite 1600, Sacramento, California 95814, a copy of the attached document in a sealed envelope, with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.
- BY FACSIMILE:** On the date written above, I caused a copy of the attached document to be transmitted to a fax machine maintained by the person on whom it is served at the fax number shown on the service list. That transmission was reported as complete and without error and a transmission report was properly issued by the transmitting fax machine.
- BY HAND DELIVERY:** On the date written above, I placed a copy of the attached document in a sealed envelope, with delivery fees paid or provided for, and arranged for it to be delivered by messenger that same day to the office of the addressee, as shown on the service list.
- BY EMAIL:** On the date written above, I emailed a copy of the attached documents to the addressee, as shown on the service list.
- BY OVERNIGHT MAIL:** I am readily familiar with my employer’s practice for the collection and processing of correspondence for overnight delivery. In the ordinary course of business, correspondence would be deposited in a box or other facility regularly maintained by the express service carrier or delivered to it by the carrier’s authorized courier on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and overnight delivery at the offices of Stoel Rives LLP, 500 Capitol Mall, Suite 1600, Sacramento, California 95814, a copy of the attached document in a sealed envelope, with delivery fees prepaid or provided for, addressed as shown on the service list.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on April 28, 2020, at Sacramento, California.

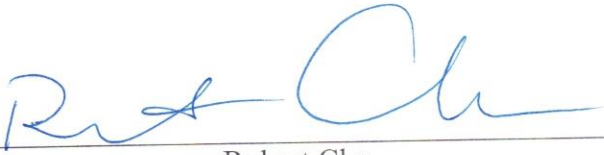

Robert Cha

EXHIBIT C

1 Timothy M. Taylor (SB #144335)
tim.taylor@stoel.com
2 Elizabeth P. Ewens (SB #213046)
elizabeth.ewens@stoel.com
3 Daniel L. Quinley (SB #312579)
daniel.quinley@stoel.com
4 STOEL RIVES LLP
5 500 Capitol Mall, Suite 1600
6 Sacramento, CA 95814
Telephone: 916.447.0700
Facsimile: 916.447.4781

7 Attorneys for Petitioners and Plaintiffs
8 TEHAMA-COLUSA CANAL AUTHORITY; SAN LUIS & DELTA-
9 MENDOTA WATER AUTHORITY; FRIANT WATER AUTHORITY;
10 GLENN-COLUSA IRRIGATION DISTRICT; RECLAMATION DISTRICT
11 108; NATOMAS CENTRAL MUTUAL WATER COMPANY; RIVER
12 GARDEN FARMS COMPANY; and SUTTER MUTUAL WATER COMPANY

13 [ADDITIONAL COUNSEL ON NEXT PAGE]

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF FRESNO

16 TEHAMA-COLUSA CANAL AUTHORITY, a
17 California Joint Powers Authority;
18 SAN LUIS & DELTA-MENDOTA WATER
19 AUTHORITY, a California Joint Powers
20 Authority;
21 FRIANT WATER AUTHORITY, a California
22 Joint Powers Authority;
23 GLENN-COLUSA IRRIGATION DISTRICT, a
24 California Irrigation District;
25 RECLAMATION DISTRICT 108, a California
26 Reclamation District;
27 NATOMAS CENTRAL MUTUAL WATER
28 COMPANY, a California Water Company;
RIVER GARDEN FARMS COMPANY, a
business entity; and SUTTER MUTUAL WATER
COMPANY, a California Water Company,

Petitioners and Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF WATER
RESOURCES, a California state agency;
CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE, a California State agency,

Respondents and Defendants.

DOES 1-50,

Real Parties in Interest.

CASE NO.

**NOTICE TO ATTORNEY
GENERAL**

[Public Resources Code § 21167.7]

California Environmental Quality Act
[CEQA]

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Meredith E. Nikkel (SB #254818)
mnikkel@downeybrand.com
Kevin M. O'Brien (SB #122713)
kobrien@downeybrand.com
Andrea P. Clark (SB #226310)
aclark@downeybrand.com
DOWNEY BRAND LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Telephone: 916.444.1000
Facsimile: 916.444.2100

Attorneys for Petitioners and Plaintiffs
TEHAMA-COLUSA CANAL AUTHORITY; RECLAMATION
DISTRICT 108; NATOMAS CENTRAL MUTUAL WATER
COMPANY; RIVER GARDEN FARMS COMPANY; and SUTTER
MUTUAL WATER COMPANY

Rebecca R. Akroyd (SB #267305)
Rebecca.akroyd@sldmwa.org
General Counsel
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
400 Capitol Mall, 28th Floor
Sacramento, CA 95814
Telephone: 916.321.4321
Facsimile: 209.826.9698

Attorneys for Petitioner and Plaintiff
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Andrea A. Matarazzo (SB #179198)
andrea@pioneerlawgroup.net
PIONEER LAW GROUP, LLP
1122 S Street
Sacramento, CA 95811
Telephone: 916.287.9500
Facsimile: .916.287.9515

Attorneys for Petitioner and Plaintiff
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Donald M. Davis (SB #169163)
ddavis@bwsllaw.com
BURKE WILLIAMS & SORENSEN LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953
Telephone: 213.236.2702

Attorneys for Petitioner and Plaintiff
FRIANT WATER AUTHORITY

1 Matthew G. Adams (SB # 229021)
2 madams@kaplankirsch.com
3 KAPLAN KIRSCH & ROCKWELL LLP
4 595 Pacific Avenue, 4th Floor
5 San Francisco, CA 94133
6 Telephone: 628.209.4151

7 Attorneys for Petitioner and Plaintiff
8 FRIANT WATER AUTHORITY

9 Andrew M. Hitchings, Esq. (SB #154554)
10 ahitchings@somachlaw.com
11 Kelley M. Taber, Esq. (SB #184348)
12 ktaber@somachlaw.com
13 SOMACH SIMMONS & DUNN
14 A Professional Corporation
15 500 Capitol Mall, Suite 1000
16 Sacramento, CA 95814
17 Telephone: 916.446.7979
18 Facsimile: 916.446.8199

19 Attorneys for Petitioner and Plaintiff
20 GLENN-COLUSA IRRIGATION DISTRICT
21
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1 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

2 PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and Code of
3 Civil Procedure section 388, that on April 28, 2020, TEHAMA-COLUSA CANAL
4 AUTHORITY, SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, FRIANT WATER
5 AUTHORITY, GLENN-COLUSA IRRIGATION DISTRICT, RECLAMATION DISTRICT
6 108, NATOMAS CENTRAL MUTUAL WATER COMPANY, RIVER GARDEN FARMS
7 COMPANY, and SUTTER MUTUAL WATER COMPANY (collectively, "Petitioners") filed a
8 Verified Petition for Writ of Mandate and Complaint for Injunctive Relief against the
9 CALIFORNIA DEPARTMENT OF WATER RESOURCES ("DWR") and the CALIFORNIA
10 DEPARTMENT OF FISH AND WILDLIFE ("CDFW"; together with DWR, "Respondents"),
11 the Fresno County Superior Court..

12 The Petition alleges that Respondents violated the California Environmental Quality Act
13 ("CEQA") by certifying and relying on a defective environmental impact report as the basis for
14 DWR's approval of the Long-Term Operation of the California State Water Project ("Project")
15 and CDFW's approval of an Incidental Take Permit for the Project.

16 A copy of the Petition is attached to this notice as **Exhibit A**.

17
18 DATED: April 28, 2020

STOEL RIVES LLP

19
20 By: 

21 TIMOTHY M. TAYLOR
22 ELIZABETH P. EWENS
23 DANIEL L. QUINLEY
24 Attorneys for Petitioners and Plaintiffs
25 TEHAMA-COLUSA CANAL AUTHORITY; SAN
26 LUIS & DELTA-MENDOTA WATER AUTHORITY;
27 FRIANT WATER AUTHORITY; GLENN-COLUSA
28 IRRIGATION DISTRICT; RECLAMATION DISTRICT
108; NATOMAS CENTRAL MUTUAL WATER
COMPANY; RIVER GARDEN FARMS COMPANY;
and SUTTER MUTUAL WATER COMPANY