

1 JASON R. FLANDERS (SBN 238007)
Email: jrf@atalawgroup.com
2 AQUA TERRA AERIS LAW GROUP
4030 Martin Luther King Jr. Way
3 Oakland, CA 94609
4 Phone: 916-202-3018

5 MICHAEL B. JACKSON (SBN 53808)
Email: mjatty@sbcglobal.net
6 P.O. Box 207
75 Court Street
7 Quincy, CA 95971
8 Phone: 530-283-1007

9 *Attorneys for Petitioners and Plaintiffs AquAlliance,*
10 *California Sportfishing Protection Alliance, and*
California Water Impact Network

11 Patrick M. Soluri (SBN 210036)
12 Osha R. Meserve (SBN 204240)
SOLURI MESERVE, A LAW CORPORATION
13 510 8th Street
Sacramento, CA 95814
14 Phone: (916) 455-7300
15 Email: patrick@semlawyers.com; osha@semlawyers.com

16 *Attorneys for Petitioners and Plaintiffs*
17 *Central Delta Water Agency, South Delta Water Agency*

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

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

23 Petitioners and Plaintiffs,
24 v.

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

28 Respondents and Defendants.

Case No. 1:20-cv-878-DAD-EPG

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

(National Environmental Policy Act, 42 U.S.C.
§§ 4321 *et seq.*; Endangered Species Act, 16
U.S.C. §§ 1531 *et seq.*; Administrative
Procedure Act, 5 U.S.C. §§ 701 *et seq.*;
California Environmental Quality Act, Cal. Pub.
Resources Code §§ 21167, 21168, 21168.5; Cal.
Code Civ. Proc. §§ 1060, 1085, 1088.5, 1094.5)

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

4 **I. INTRODUCTION**

5 1. This is a civil suit brought pursuant to the National Environmental Policy Act
6 (“NEPA”), 42 U.S.C. §§ 4321 et seq., the Administrative Procedure Act (“APA”), 5 U.S.C. §§
7 701 et seq., and the California Environmental Quality Act (“CEQA”), Public Resources Code §§
8 21000 et seq., and the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531 et seq.

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

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

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

25 5. This action arises following the District Court’s judgment in 2018 vacating and
26 setting aside a similar but distinct 10-year water transfer program and associated environmental
27 documents originally approved in 2015. Following the District Court’s vacatur, the United State
28 Bureau of Reclamation (“USBR”) and the San Luis & Delta Mendota Water Authority

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

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

15 7. In addition, the U.S. Fish and Wildlife Service (“FWS”) prepared an inadequate
16 biological opinion (“BiOp”) that fails to adequately analyze the Project’s impacts on giant garter
17 snake (“GGS”) or explain how proposed conservation measures will avoid jeopardy to that
18 species.

19 8. USBR then arbitrarily and capriciously relied on the flawed GGS BiOp in violation
20 of its obligation under the ESA to ensure that its actions will not jeopardize the continued
21 existence of the GGS.

22 9. As a result of these numerous and compounding deficiencies, the Project put forth
23 by the Defendants poses a significant threat to the Delta, Sacramento River and Valley, other
24 water resources in California, and the public is left uninformed of these impacts.

25 **II. JURISDICTION AND VENUE**

26 10. This Court has jurisdiction pursuant to 28 U.S.C § 1331 (federal question), 28
27 U.S.C § 1346 (United States as defendant), 28 U.S.C § 2201 (declaratory relief), 28 U.S.C § 2202
28 (injunctive relief), the APA, 5 U.S.C. §§ 701-706, and the ESA 16 U.C.S. § 1540(g).

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

6 12. Venue is appropriate in the Eastern District of California pursuant to 28 U.S.C. §
7 1391(e) because defendant USBR is located in Sacramento County, and a substantial part of the
8 events or omissions giving rise to the claims alleged in this Complaint occurred and will continue
9 to occur in this judicial district.

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

11 **III. INTRADISTRICT ASSIGNMENT**

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

17 **IV. PARTIES**

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

28

1 16. Petitioner and Plaintiff CALIFORNIA SPORTFISHING PROTECTION
2 ALLIANCE (“CSPA”) is a non-profit public benefit corporation organized under the laws of the
3 State of California with its main office in Stockton, California. CSPA has approximately 2000
4 members who live, recreate and work in and around waters of the State of California, including the
5 Sacramento River, San Joaquin River, the Delta, Suisun Bay and San Pablo Bay. CSPA is
6 dedicated to the preservation, protection, and defense of the environment, the wildlife and the
7 natural resources of all waters of California. To further these goals, CSPA actively seeks federal
8 and state agency implementation of the Act and other laws and, where necessary, directly initiates
9 enforcement actions on behalf of itself and its members. CSPA has been actively engaged in
10 proceedings relating to the environmental impact of the SWP as well as the federal Central Valley
11 Project (“CVP”).

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

22 18. Petitioner and Plaintiff CENTRAL DELTA WATER AGENCY (“CDWA”) is a
23 political subdivision of the State of California created by the California Legislature under the
24 Central Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix, 117-
25 1.1, et seq.), by the provisions of which CDWA came into existence in January of 1974. CDWA’s
26 boundaries are specified in Water Code Appendix section 117-9.1 and encompass approximately
27 120,000 acres, which are located entirely within both the western portion of San Joaquin County
28 and the “Sacramento-San Joaquin Delta” as defined in California Water Code section 12220.

1 While the lands within the agency are primarily devoted to agriculture, said lands are also devoted
2 to numerous other uses including recreational, wildlife habitat, open space, residential,
3 commercial, and institutional uses. CDWA is empowered to “sue and be sued” and to take all
4 reasonable and lawful actions, including to pursue legislative and legal action, that have for their
5 general purpose either: (1) to protect the water supply of the lands within the agency against
6 intrusion of ocean salinity; and (2) to assure the lands within the agency a dependable supply of
7 water of suitable quality sufficient to meet present and future needs. The agency may also
8 undertake activities to assist landowners and local districts within the agency in reclamation and
9 flood control matters. *See* Wat. Code, Appendix, 117-4.3, subd. (b) & 117-4.1, subds. (a) and (b),
10 respectively. CDWA may assist landowners, districts, and water right holders within its
11 boundaries in the protection of vested water rights and may represent the interests of those parties
12 in water right proceedings and related proceedings before courts of both the state of California and
13 the United States to carry out the purposes of the agency. *See* Wat. Code, Appendix, 117-4.2,
14 subd. (b). Operation of the CVP and the State Water Project (“SWP”) adversely affect flows,
15 circulation, levels, and quality of water in the channels within the boundaries of the CDWA to the
16 detriment of agricultural and other beneficial water users. By statute, regulation and permit, the
17 USBR and the California Department of Water Resources (“DWR”) are supposed to fully mitigate
18 their impacts on such other uses as well as maintain various water quality standards intended to
19 protect the Delta estuary and in-Delta users. The CVP and SWP fail to meet these obligations on a
20 regular basis, and the proposed Project may exacerbate DWR and USBR’s continued failure to
21 meet their obligations, resulting in further impaired water flow, circulation, levels, and quality of
22 water.

23 19. Petitioner and Plaintiff SOUTH DELTA WATER AGENCY (“SDWA”) is a
24 political subdivision of the State of California created by the California Legislature under the
25 South Delta Water Agency Act, chapter 1089 of the statutes of 1973 (Wat. Code, Appendix, 116-
26 1.1, et seq.), by the provisions of which SDWA came into existence in January of 1974. SDWA’s
27 boundaries are specified in Water Code Appendix section 116-9.1 and encompass approximately
28 148,000 acres which are located entirely within both the south-western portion of San Joaquin

1 County and the “Sacramento-San Joaquin Delta” as defined in California Water Code section
2 12220. While the lands within the agency are primarily devoted to agriculture, said lands are also
3 devoted to numerous other uses including recreational, wildlife habitat, open space, residential,
4 commercial, municipal and institutional uses. SDWA is empowered to “sue and be sued” and to
5 take all reasonable and lawful actions, including to pursue legislative and legal actions, that have
6 for their general purpose either: (1) to protect the water supply of the lands within the agency
7 against intrusions of ocean salinity; and/or (2) to assure the lands within the agency a dependable
8 supply of water of suitable quality sufficient to meet present and future needs. The agency may
9 also undertake activities to assist landowners and local districts within the agency in reclamation
10 and flood control matters. *See* Wat. Code, Appendix, 116-4.2, subd. (b) & 116-4.1, subds. (a) and
11 (b), respectively. SDWA may assist landowners, districts, and water right holders within its
12 boundaries in the protection of vested water rights and may represent the interests of those parties
13 in water right proceedings and related proceedings before courts of both the state of California and
14 the United States to carry out the purposes of the agency. *See* Wat. Code, Appendix, 116-4.2
15 subd. (b). Operation of the CVP and the SWP adversely affect flows, circulation, levels, and
16 quality of water in the channels within the boundaries of the SDWA to the detriment of
17 agricultural and other beneficial water users. By statute, regulation and permit, the USBR and
18 DWR are supposed to fully mitigate their impacts on such other uses as well as maintain various
19 water quality standards intended to protect the Delta estuary and in-Delta users. The CVP and
20 SWP fail to meet these obligations on a regular basis, and the proposed Project may exacerbate
21 DWR and USBR’s continued failure to meet their obligations, resulting in further impaired water
22 flow, circulation, levels, and quality of water.

23 20. Respondent and Defendant UNITED STATES BUREAU OF RECLAMATION
24 (“USBR”) is a subdivision of the Department of the Interior, an agency of the United States of
25 America, and is the Project’s lead agency under the NEPA, 28 U.S.C. section 4321 et seq.

26 21. Respondent and Defendant SAN LUIS & DELTA-MENDOTA WATER
27 AUTHORITY (“SLDMWA”) is a joint powers agency established under California law, and
28 consists of water agencies representing federal and exchange water service contractors within the

1 western San Joaquin Valley, San Benito and Santa Clara counties in the State of California.

2 SLMDWA is the Project's lead agency under CEQA.

3 22. Defendant David Bernhardt is the Secretary of the United States Department of
4 Interior. Plaintiffs name Secretary Bernhardt in this action in his official capacity, for his actions
5 or failures to act in an official capacity, or under color of legal authority. Secretary Bernhardt is
6 responsible for ensuring that the Department of Interior's actions comply with its obligations and
7 with the APA.

8 23. Defendant UNITED STATES DEPARTMENT OF INTERIOR is responsible for
9 the administration and implementation of the federal reclamation laws, including the 1902
10 Reclamation Act, as amended, and others, and for projects operating under its authority, including
11 the CVP.

12 24. Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency of
13 the United States Department of the Interior. The FWS maintains an office in Sacramento,
14 California, in Sacramento County. The FWS is the agency responsible for authoring the Project's
15 Biological Opinion, dated May 17, 2019, challenged in this action.

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

26 **V. FACTUAL AND PROCEDURAL BACKGROUND**

27 26. In late 2010 and early 2011, USBR published a Notice of Intent in the Federal
28 Register and a Notice of Preparation in the California State Clearinghouse for a "Long-Term

1 Water Transfers” project that would cover ten years of transfers. USBR and SLDMWA released a
2 Draft EIS/EIR for public and agency review and comment in 2014, and a Final EIS/EIR was
3 released in 2015. SLDMWA later approved the Project, certified the EIR, and filed a Notice of
4 Determination, while USBR signed its Record of Decision that same year.

5 27. The so-called “Long-Term Water Transfers” project was a ten-year programmatic
6 analysis of water transfers from willing sellers to Central Valley Project contractors south and
7 west of the Delta. The original “Long-Term Water Transfers” would have been a destructive force
8 on groundwater dependent communities and farms, streams, species, and habitat in the
9 Sacramento Valley and the Delta’s wildlife, water quality and legal-water users.

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

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

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

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

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

8 33. Plaintiffs, wary of USBR and SLDMWA’s attempt to engage in as little
9 environmental review as possible while purporting to comply with the District Court’s ruling in
10 *AquAlliance, supra*, 287 F.Supp.3d. 969, commented extensively on the Draft
11 Supplemental/Revised EIS/EIR and the Final Supplemental/Revised EIS/EIR.

12 34. The EIS/EIR is nothing more than USBR and SLDMWA’s failed attempt to update
13 the 2015 FEIS/EIR document, in piecemeal fashion, in response to the Court’s ruling in
14 *AquAlliance, supra*, 287 F.Supp.3d. 969. Not only have USBR and SLDMWA not made changes
15 to rectify the flaws detailed in the District Court’s ruling, they have created an EIS/EIR that is
16 confusing and unusable as an informational document.

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

26 36. Most troubling of all is that the Project, despite having a six-year as opposed to a
27 ten-year time frame, would still pose a considerable threat to groundwater dependent communities
28 and farms, streams, species, and habitat in the Sacramento Valley and the Delta, wildlife, water

1 quality, and in-Delta water users. USBR and SLDMWA do not take these significant risks
2 seriously, as reflected in the EIS/EIR's analysis of the Project's impacts.

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

7 38. Groundwater substitution impacts groundwater, risking basin overdraft, stream
8 depletion and cones of depression. Cones of depression are not isolated to single points, but cause
9 region-wide impacts across zones of influence. Stream depletion occurs when lowered
10 groundwater levels cause increased seepage from streams. These effects from excess groundwater
11 pumping cause impacts to agriculture operations, the availability of groundwater for other users,
12 and biological impacts to species that rely on the depleted streams as habitat as well as terrestrial
13 habitat.

14 39. Significant impacts to groundwater would conflict with local agencies' compliance
15 with the Sustainable Groundwater Management Act and the Public Trust Doctrine.

16 40. The Project would impact groundwater basins, such as the Sacramento Valley
17 Groundwater Basin that is already in decline with all but one of the Project's subbasins rated as
18 high or medium priority under SGMA. The Project will exacerbate existing conditions, and impair
19 existing domestic and agricultural wells, streams, rivers, and groundwater dependent ecosystems.

20 41. Moreover, the Project will exacerbate the impacts of global climate change on
21 groundwater resources. As climate change limits the availability of surface water, groundwater
22 will be increasingly relied on, further threatening existing groundwater levels. The Project would
23 compound those impacts through groundwater substitutions for surface water sold.

24 42. Drastic enough groundwater depletion creates the risk of ground subsidence, which
25 is already occurring in the seller service areas.

26 43. Stream depletion leads to impacts to deep-rooted vegetation. Loss of vegetation in
27 conjunction with stream depletion leads to higher water temperatures and increased
28

1 evapotranspiration, further lowering surface water levels. These impacts compound one another
2 and would devastate wildlife inhabit those streams.

3 44. Crop idling and shifting destroys habitat for endangered species such as the giant
4 garter snake. The giant garter snake relies on active rice fields and the supporting water
5 conveyance infrastructure as alternative habitat in the absence of suitable natural marsh. The
6 Project could result in the elimination of 12 percent of the active rice fields by crop idling and
7 shifting, directly affecting giant garter snake habitat.

8 45. The Project's mitigation for impacts to giant garter snakes is inadequate and flies in
9 the face of well-established science. The Project would only protect the water conveyance
10 infrastructure associated with rice fields, the canals, levees, and ditches that giant garter snake use
11 for intermittent period while travelling between more established habitat. Protecting only the
12 conveyance features, and not the actual rice fields, jeopardizes giant garter snake populations.
13 Rice fields are unquestionably important habitat resource for giant garter snakes.

14 46. Limiting giant garter snake habitat would lead to increased dispersal, predation, and
15 reduced reproduction leading to population-level effects.

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

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

25 49. The EIS/EIR expressly relies on the 2019 BiOp, which purports to evaluate the
26 effects of the Project on GGS. However, the 2019 BiOp evaluates an agency action that is not
27 coextensive with the Project here by assuming, without justification, that water transfers would
28 only occur during two of the remaining Project years. The BiOp also arbitrarily ignores the

1 importance of rice fields to GGS habitat by focusing conservation measures on ditches and canals.
2 Finally, the BiOp analyzes an impermissibly narrow scope of cumulative projects that may
3 contribute to jeopardy of the GGS.

4 **VI. LEGAL FRAMEWORK**

5 Administrative Procedure Act

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

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

13 National Environmental Policy Act

14 52. The Project is subject to the environmental review process of NEPA, 42 U.S.C. §
15 4321. NEPA requires the Federal government to use all practicable means to improve and
16 coordinate federal activities to create and maintain conditions in which people and nature can exist
17 in “productive harmony.” 42 U.S.C. § 4331. NEPA is an environmental full-disclosure law so
18 that federal agencies must consider all environmental consequences of their decisions.

19 53. “NEPA . . . makes environmental protection a part of the mandate of every federal
20 agency and department,” *Calvert Cliffs’ Coord. Com. v. United States*, 440 F.2d 1109, 112 (D.C.
21 Cir. 1971), and is the “basic national charter for protection of the environment.” 40 C.F.R. §
22 1500.1(a). Its purpose is “to help public officials make decisions that are based on understanding
23 of environmental consequences, and take actions that protect, restore, and enhance the
24 environment.” *Id.* § 1500.1(c). The Council on Environmental Quality (“CEQ”), an agency
25 within the Executive Office of the President, has promulgated regulations implementing NEPA.
26 *See* 10 C.F.R. § 1021.103.

27 54. Among other things, NEPA requires all agencies of the federal government to
28 prepare a “detailed statement” that discusses the environmental effects of, and reasonable

1 alternatives to, all “major Federal actions significantly affecting the quality of the human
2 environment.” 42 U.S.C. § 4332(2)(C). This statement is commonly known as an environmental
3 impact statement (“EIS”). An EIS must describe: (1) the “environmental impact of the proposed
4 action”; (2) any “adverse environmental effects which cannot be avoided should the proposal be
5 implemented”; and (3) any “alternatives to the proposed action.” *Id.* The environmental “effects”
6 that must be considered in an EIS include “indirect effects, which are caused by the action and are
7 later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. §
8 1508.8(b).

9 California Environmental Quality Act

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

17 56. Pursuant to CEQA, a “project” is an activity which may cause either direct physical
18 change in the environment, or reasonably foreseeable indirect physical change in the environment
19 (Pub. Resources Code § 21065(a)); and a “discretionary” project is one that is subject to
20 judgmental controls, where the agency can use its judgment to decide whether and how to carry
21 out a project. Cal. Code Regs., tit. 14, ch. 3 (“CEQA Guidelines”), § 15002(i). Prior to
22 approving any discretionary project, an agency must fully disclose and analyze all of the project’s
23 potentially significant direct, indirect, and cumulative environmental effects. *See, e.g.*, CEQA
24 Guidelines § 15002(f)), and that public agencies avoid or minimize such environmental damage
25 where feasible. CEQA Guidelines § 15021(a). Pursuant to this duty, no public agency may
26 approve or carry out a project where one or more significant effects on the environment may
27 occur if the project is approved, unless certain narrow findings are made. CEQA Guidelines §§
28 15091, 15093.

1 Public Trust Doctrine

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

13 Endangered Species Act

14 58. The ESA prohibits federal agencies from taking actions that are “likely to
15 jeopardize the continued existence” or “result in the destruction or adverse modification of
16 [critical] habitat[s]” of endangered or threatened species without the issuance of an Incidental
17 Take Permit (“ITP”). 16 U.S.C. 1536(a)(2).

18 59. Where a proposed action “may” adversely affect a species or its habitat, ESA
19 Section 7(a)(2) compels federal action agencies to engage in formal consultation with either FWS
20 or NMFS, depending on the species, to determine the likely effects of their proposed actions on
21 endangered or threatened species and their critical habitats. 16 U.S.C. § 1536(a)(2); 50 C.F.R. §
22 402.14(a).

23 60. A formal consultation results in the preparation of a BiOp by either the FWS or
24 NMFS, depending on the species. A BiOp details whether the proposed action, “taken together
25 with cumulative effects, is likely to jeopardize the continued existence of listed species or result in
26 the destruction or adverse modification of critical habitat.” 50 C.F.R. § 402.14(g)(4).

27 61. The BiOp must be based on “the best scientific and commercial data available or
28 which can be obtained during the consultation for an adequate review of the effects that an action

1 may have upon listed species or critical habitat.” 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

2 62. If the BiOp concludes that jeopardy is not likely and that there will not be an
3 adverse modification of critical habitat, or that there is a “reasonable and prudent alternative” to
4 the agency action that avoids jeopardy and adverse modification and that the incidental taking of
5 endangered or threatened species will not violate section 7(a)(2), the consulting agency can issue
6 an ITS which, if followed, exempts the action agency from the prohibition on takings found in
7 Section 9 of the ESA. The ITS must authorize and anticipate any incidental take that may result
8 from the proposed project and explain how such take will not jeopardize the continued existence
9 of the endangered or threatened species. The ITS must: (1) specify the impact of the incidental
10 taking on the species; (2) specify the “reasonable and prudent measures” that the FWS considers
11 necessary or appropriate to minimize such impact; (3) set forth “terms and conditions” with which
12 the action agency must comply to implement the reasonable and prudent measures (including, but
13 not limited to, reporting requirements); and (4) specify the procedures to be used to handle or
14 dispose of any animals actually taken. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

15 63. The ESA requires that a BiOp detail the effects of the “agency action” on listed
16 species and/or critical habitat. 16 U.S.C. § 1536(b)(3)(A). The ESA “prohibits agencies from
17 segmenting a single agency action into separate parts for consultation.” *Nat'l Wildlife Fedn v. Nat'l*
18 *Marine Fisheries Serv.*, No. C02-2259L, 2004 U.S. Dist. LEXIS 32494, at *32 (W.D. Wash. Nov.
19 1, 2004). Further, the ESA “requires the biological opinion to analyze the effect of the entire
20 agency action.” *Conner v. Burford*, 848 F.2d 1441, 1435 (9th Cir. 1988) (citing *North Slope*
21 *Borough v. Andrus*, 642 F.2d 589, 608 (D.C. Cir. 1980), *aff'g in part, rev'g in part*, 486 F. Supp.
22 332 (D.D.C. 1980)) (emphasis added). The term “agency action” is interpreted broadly as “caution
23 can only be exercised if the agency takes a look at all the possible ramifications of the agency
24 action.” *Id.* (quoting *North Slope*, 642 F.2d 589, 608). Moreover, the ESA does not permit an
25 “incremental-step approach” to consultation. *Id.* at 1458. Instead, “biological opinions must be
26 coextensive with the agency action.” *Id.*

27 64. Consultation with either FWS or NMFS alone, however, does not “satisfy an
28 agency’ duty under the [ESA].” *Resources Limited, Inc. v. Robertson*, 35 F.3d 1300 (9th Cir.

1 1994) (modification added). Instead, ESA section 7(a)(2) places an independent substantive
2 obligation on the action agency, “to ensure that its [actions are]...not likely to jeopardize”
3 endangered or threatened species, or adversely modify their critical habitat. *Def. of Wildlife v.*
4 *United States EPA*, 420 F.3d 946, 976 (9th Cir. 2005), rev'd on other grounds, *Nat'l Ass'n of Home*
5 *Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) (modifications added) (citing 16 U.S.C. §
6 1536(a)(2)) (See also *Ctr. for Biological Diversity v. Salazar*, 804 F. Supp. 2d 987, 1010 (D. Ariz.
7 2011)).

8 65. An action agency that “[a]rbitrarily and capriciously rel[ies] on a faulty Biological
9 Opinion violates” the substantive duty created by Section 7(a)(2) to ensure that its actions will not
10 jeopardize the continued existence of a listed species. *Defenders of Wildlife, supra*, 420 F.3d at
11 976 (modifications added). (See also *Ctr. for Biological Diversity, supra*, 804 F. Supp. 2d at 1010;
12 and *Resources Limited, supra*, 35 F.3d at 1304, “[a]n agency cannot abrogate its responsibility to
13 ensure that its actions will not jeopardize a listed species; its decision to rely on a FWS biological
14 opinion must not have been arbitrary or capricious.”)

15 66. An action agency’s reliance on a BiOp will be found arbitrary and capricious if “the
16 Biological Opinion’s flaws are *legal* in nature.” *Defenders of Wildlife, supra*, 420 F.3d at 976
17 (emphasis in original). In those situations, discerning the BiOp’s flaws “required not technical or
18 scientific expertise. The [action agency] should...underst[and] the legal errors of the Biological
19 Opinion’s analysis. Its failure to do so [leads] to an action based on reasoning ‘not in accordance
20 with law’ and thus arbitrary and capricious. *Id.*

21 **VII. STANDING**

22 67. Members of AquAlliance, CSPA, and C-WIN reside in the Bay-Delta, the
23 Sacramento River valley, and the San Joaquin River valley. AquAlliance’s members rely on
24 groundwater, rivers, and streams for their homes, businesses, recreation, to irrigate crops, and to
25 participate in the economy of the region. AquAlliance’s members play an active role in water
26 education, planning, policy, and protection. CSPA and its members actively participate in water
27 rights and water quality processes, engage in education and organization of the fishing
28

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

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

23 69. CDWA and SDWA constituent land owners, water rights holders and beneficial
24 water users are located in the Delta and rely on surface water and groundwater for their homes,
25 businesses, recreation, to irrigate crops, and to participate in the economy of the region. These
26 landowners, water rights holders and beneficial water users use the waters, including groundwater,
27 affected by the USBR and SLMWDA Project, for agriculture, recreation, wildlife habitat, open
28 space as well as residential, commercial, municipal and institutional uses. The Project impairs

1 these beneficial uses of water by negatively impacting water quantities, levels, quality, and
2 circulation, among other impacts. The Project's impacts on biological resources, including
3 impacts to protected species, also impairs these Plaintiffs' use and enjoyment of the Delta region
4 for recreational and other uses.

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

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

25 72. Failure by USBR, FWS and SLDMWA to ensure that the Project does not impact
26 listed species and their habitats harms Plaintiffs' members', officers', landowners', and water
27 rights holders' interests in the species. Unless the requested relief is granted, Plaintiffs' interests
28 will continue to be injured. The injuries described above are actual, concrete injuries that will

1 occur unless relief is granted by this Court. The relief sought herein, USBR and SLDMWA's
2 compliance with CEQA and NEPA, and FWS' compliance with the ESA, would redress Plaintiffs'
3 injuries. Plaintiffs have no other adequate remedy at law, and they bring this action on behalf of
4 their adversely affected members.

5 **VIII. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

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

14 **IX. NOTICE OF CEQA SUIT**

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

19 **X. NOTICE OF ESA SUIT**

20 76. Plaintiffs have complied with 16 U.S.C. § 1540(g) by providing written notice of
21 commencement of this action to USBR, the Secretary of the United States Department of the
22 Interior, David Bernhardt, the Director of FWS, and to the United States Attorney General, 60-
23 days prior to filing this Complaint. A true and correct copy of the notice provided pursuant
24 thereto, with proof of service thereof, is attached hereto as Exhibit B.

25 **XI. ELECTION TO PREPARE RECORD**

26 77. Petitioners elect to prepare the CEQA administrative record in this proceeding
27 pursuant to Public Resources Code section 21167.6(b)(2). Petitioners' election is attached hereto
28 as Exhibit B.

1 **XII. PRIVATE ATTORNEY GENERAL DOCTRINE**

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

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

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

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

1 Legislature’s policy, in adopting CEQA, of affording the greatest protections to the environment
2 within the scope of the statute.

3 **INJUNCTIVE AND DECLARATORY RELIEF**

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

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

15 **FIRST CLAIM FOR RELIEF**

16 **VIOLATION OF NATIONAL ENVIRONMENTAL POLICY ACT**

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

18 84. Plaintiffs incorporate by reference each and every allegation contained in
19 Paragraphs 1 through 83 as though fully set forth herein.

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

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

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

28

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

4 88. The EIS/EIR describes the Project as restricting transfers to 250,000 acre feet per
5 year, yet no legally enforceable element of the Project would enforce the purported annual
6 restriction.

7 89. The EIS/EIR describes the Project as only including transfers for two years
8 between 2019-2024, yet no legally enforcement element of the Project would restrict transfers to
9 only two years of the 2019-2024 period.

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

13 91. The Project now includes additional sellers that are not reflected in the EIS/EIR’s
14 project description.

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

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

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

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28

1 Failure to Provide Sufficient Information to Generate Meaningful Comment

2 94. A lead agency violates NEPA by “failing to provide the public with ‘sufficient
3 information to . . . generate meaningful comment’” *Sierra Club v. Flowers*, 423 F.Supp.2d 1273,
4 1329 (S.D. Fla. 2006) quoting 33 C.F.R. § 325.3(a); 40 C.F.R. §§ 15001.(b), 1500.2, 1506.6.

5 95. Here, the EIS/EIR is disorganized, relevant information is inaccessible, and the
6 analysis is incomplete.

7 Inadequate Analysis of Project Alternatives

8 96. NEPA requires an EIS to discuss, among other things, alternatives to the proposed
9 action. 42 U.S.C. § 4332(2)(C). NEPA’s implementing regulations describe the analysis of
10 alternatives as “the heart of the environmental impact statement.” CEQ regulations, § 1502.14.
11 The range of alternatives that an EIS must consider is “dictated by the nature and scope of the
12 proposed action.” *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir.
13 2008). Yet agencies may not define the project’s purpose and need in terms so “unreasonably
14 narrow,” that only one alternative would accomplish the goals of the project. *Nat’l Parks &
15 Conservation Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2010).

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

20 Inadequate Analysis of Baseline Conditions and Project Impacts

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

27 99. Additionally, an agency must supplement an EIS where there are significant new
28 circumstances or information relevant to a project’s environmental concerns. 40 C.F.R. 1502.9,

1 subd. (c)(ii); see also *Russell Country Sportsmen v. United States Forest Serv.*, 668 F.3d 1037,
2 1045 (9th Cir. 2011). Failure to account for such changes renders an EIS’s impact analysis legally
3 deficient. See *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 715 (10th Cir. 2009).

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

- 6 a. Vegetation and Wildlife;
- 7 b. Climate Change;
- 8 c. Groundwater;
- 9 d. Water Supply;
- 10 e. Water Quality;
- 11 f. Geology and Soils;
- 12 g. Air Quality;
- 13 h. Fisheries;
- 14 i. Regional Economics;
- 15 j. Environmental Justice;

16 Defective Scope of Cumulative Projects

17 101. NEPA regulations require USBR to consider cumulative effects which “result[]
18 from the incremental impact of the action when added to other past, present, and reasonably
19 foreseeable future actions” with the goal of making sure that “individually minor but collectively
20 significant” actions are properly analyzed. 40 C.F.R. § 1508.7; see also *Kern v. BLM*, 284 F.3d
21 1062, 1078 (9th Cir. 2002) (purpose is to avoid “the tyranny of small decisions”). Here, however,
22 the EIS/EIR failed to consider the effects of the Project combined with the implementation of
23 other projects.

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

3 Inadequate Mitigation

4 103. NEPA’s implementing regulations require agencies to discuss potential mitigation
5 measures in their EISs and decision documents. *See* 40 C.F.R. §§ 1502.14(f), 1502.16(e)-(h),
6 1505.2(c), 1508.25(b)(3); *see also Id.* § 1508.20 (defining “mitigation”). Mitigation must “be
7 discussed in sufficient detail to ensure that environmental consequences have been fairly
8 evaluated.” *Methow Valley Citizens Council*, 490 U.S. at 353. Such discussion necessarily
9 includes “an assessment of whether the proposed mitigation measures can be effective.” *S. Fork*
10 *Band Council of W. Shoshone of Nev. v. U.S. Dep’t of Interior*, 588 F.3d 718, 727 (9th Cir. 2009).
11 The EIS/EIR’s analysis of proposed mitigation is defective under this standard.

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

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

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

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

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

26 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

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1 **SECOND CLAIM FOR RELIEF**

2 **VIOLATIONS OF CEQA**

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

4 108. Plaintiffs incorporate by reference each and every allegation contained in
5 Paragraphs 1 through 107 as though fully set forth herein.

6 109. The SLDMWA prejudicially abused its discretion in certifying the EIS/EIR. The
7 SLDMWA did not proceed in the manner required by law and its decisions in approving the
8 Project and certifying the EIS/EIR are not supported by substantial evidence. Pub. Resources
9 Code § 21168.5; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40
10 Cal.4th 412, 426 (Cal. 2007). These legal deficiencies include, without limitation, the following:

11 **The Project Description is Vague, Incomplete, and Unstable**

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

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

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

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

7 114. SLDMWA states, in its responses to comments on the Final EIS/EIR, that the
8 project will only include single year transfers, while the Final EIS/EIR states that multi-year
9 transfers are covered.

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

13 116. The Project now includes additional sellers that are not reflected in the EIS/EIR's
14 project description.

15 The EIS/EIR is Inadequate as an Informational Document

16 117. The information in an EIR must not only be sufficient in quantity, but it must be
17 presented a clear manner so as to adequately inform the public and decision makers. "A reader of
18 the FEIR could not reasonably be expected to ferret out an unreferenced discussion . . . , interpret
19 that discussion's unexplained figures without assistance, and spontaneously incorporate them into
20 the FEIR's own discussion of total projected supply and demand." *Vineyard Area Citizens for*
21 *Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 442 (2007). Information
22 scattered throughout an EIR and its appendices and supporting reports are not substitutes for good
23 faith reasoned analysis. *Ibid.* An EIR should be written in a way that readers are not forced "to
24 sift through" to find important components of the analysis. *San Joaquin Raptor Rescue Ctr. v.*
25 *County of Merced* (2007) 149 Cal.App.4th 645, 659. Accordingly, an EIR is usually prepared as a
26 stand-alone document. CEQA provides that EIRs should be prepared in a "standard format" when
27 feasible. Pub. Resources Code §§ 21100(a), 21061; CEQA Guidelines, § 15122. It is
28 inappropriate, however, to use a group of documents collected together to serve the function of an

1 EIR, as SLDMWA appears to be attempting here. *See Russian Hill Improvement Ass'n v. Board of*
2 *Permit Appeals* (1974) 44 Cal.App.3d 158. The incomplete presentation of information is a failure
3 to proceed in a manner required by law. *Vineyard Area Citizens, supra; Banning Ranch*
4 *Conservancy v. City of Newport Beach*, 2 Cal.5th 918, 935 (2017).

5 118. Here, the EIS/EIR is disorganized, relevant information is inaccessible, and the
6 analysis is incomplete.

7 The EIS/EIR Fails to Analyze Related Regulatory Regimes

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

13 120. The EIS/EIR fails to disclose other related regulatory regimes or analyze how such
14 regimes could impact the Project.

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

18 122. In addition, the EIS/EIR fails to consider procedural and substantive requirements
19 of the Public Trust Doctrine as afforded to wildlife, water of the state, and ecosystems, for the
20 benefit of the People of the State.

21 123. Additionally, the EIS/EIR fails to consider inconsistencies with California's
22 Sustainable Groundwater Management Act.

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

24 124. In order to determine whether a project's impacts will be significant, CEQA
25 requires lead agencies to compare the impact of a proposed project to the "physical environmental
26 conditions in the vicinity of the project, as they exist at the time the notice of preparation is
27 published." These conditions serve as the project's "baseline." CEQA Guidelines § 15125. The
28 description of the project's baseline ensures that the public has "an understanding of the

1 significant effects of the proposed project and its alternatives.” CEQA Guidelines § 15125(a).
2 Accurately determining the baseline environmental conditions is crucial to accurately evaluating a
3 project’s impact. *E.g., San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus*, 27
4 Cal.App.4th 713 (1994).

5 125. The EIS/EIR’s description of baseline conditions is alternatively incomplete and
6 inaccurate, infecting and invalidating the entirety of the EIS/EIR’s environmental analysis. The
7 flaws include, but are not limited to:

8 a. Failure to describe baseline groundwater, surface water, water supply,
9 climate, habitat, and subsidence conditions of sellers’ service areas;

10 b. Impermissibly relying on severely outdated baseline information from the
11 2015 EIS/EIR to evaluate Project impacts.

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

13 126. CEQA requires that an EIR describe the proposed project’s significant
14 environmental effects. Each must be revealed and fully analyzed in the EIR. Pub. Resources
15 Code § 21100(b), CEQA Guidelines § 15126.2(a).

16 127. The EIR/EIS’s impact analysis is inadequate in part because it fails to account for
17 new information that has become available since the original environmental review of the 2015-
18 2024 transfers project. “If the proposed changes render the previous environmental document
19 wholly irrelevant to the decision-making process, then it is only logical that the agency start from
20 the beginning under [Public Resources Code] section 21151 by conducting an initial study to
21 determine whether the project may have substantial effects on the environment.” *Friends of*
22 *College of San Mateo Gardens v. San Mateo County Community College Dist.* 1 Cal.5th 937, 951
23 (2006). The question under CEQA is “when there is a change in plans, circumstances, or available
24 information after a project has received initial approval, the agency’s environmental review
25 obligations turn on the value of the new information to the still pending decision making process.”
26 *Id.* at 951- 951, internal quotations omitted. The CEQA lead agency must decide whether project
27 changes require major revisions to the original document. (*Id.* at 952.)

28 128. The EIS/EIR fails to provide decision makers with sufficient analysis in numerous

1 respects including, without limitation, the following:

- 2 a. Vegetation and Wildlife;
- 3 b. Climate Change;
- 4 c. Groundwater;
- 5 d. Water Supply;
- 6 e. Water Quality;
- 7 f. Geology and Soils;
- 8 g. Fisheries;
- 9 h. Regional Economics;

10 The EIS/EIR Fails to Adequately Evaluate Cumulative Impacts

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

19 130. The EIR's cumulative impacts analysis is deficient in several respects, including
20 the following:

- 21 a. The EIS/EIR fails to analyze the combined effects of recent past water
22 transfer projects in combination with the Project;
- 23 b. The EIS/EIR fails to include probable future projects in its cumulative
24 impact analysis, including the Addendum to the Coordinated Operation Agreements of the Central
25 Valley Project and the State Water Project, the Water Quality Control Plan for the San Francisco
26 Bay/Sacramento-San Joaquin Delta Estuary Amendments and Voluntary Settlement Agreements,
27 the Sacramento Valley Water Management Agreement, the Sites Reservoir project, and other

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1 water transfers, the California Department of Water Resources' Delta Conveyance Project, and
2 amendments to State Water Project water supply contracts.

3 c. The EIS/EIR fails to analyze or disclose the cumulative effects from
4 reductions in Delta outflow.

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

6 131. "An EIR shall describe feasible measures which could minimize significant adverse
7 impacts." CEQA Guidelines § 15126.4(a)(1). An EIR may not defer the formulation of
8 mitigation measures to a future time, but mitigation measures may specify performance standards
9 that would mitigate significant effects and may be accomplished in in more than one specified
10 way. "Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or
11 orders a report without either setting standards or demonstrating how the impact can be mitigated
12 in the manner described in the EIR." *Preserve Wild Santee v. City of Santee*, 210 Cal.App.4th
13 260, 280-281 (2012).

14 132. The efficacy of a mitigation measure in remedying the identified environmental
15 problem must be apparent in the EIR. *Sierra Club v. County of San Diego*, (2014) 231 Cal.App.4th
16 1152, 1168; *Communities for a Better Env't v. City of Richmond*, (2010) 184 Cal.App.4th 70,
17 95; *Gray v. County of Madera*, (2008) 167 Cal.App.4th 1099, 1116; *Cleveland Nat'l Forest*
18 *Found. v. San Diego Ass'n of Gov'ts*, (2017) 17 Cal.App.5th 413, 433.

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

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

- 22 a. Mitigation for tree loss;
- 23 b. Mitigation for streamflow loss;
- 24 c. Mitigation for groundwater depletion and subsidence;
- 25 d. Mitigation for impacts to Giant Garter Snakes.

26 135. Additionally, the EIS/EIR describes the Project as having a 250,000 acre feet per
27 year transfer limit, and claims that transfers would only occur in two years between 2019-2024.

28

1 These restrictions are *de facto* mitigation measures, and as such they must be defined with
2 specificity and be legally enforceable.

3 The EIS/EIR Failed to Adequately Respond to Comments

4 136. Plaintiffs incorporate by reference each and every allegation contained in
5 Paragraphs 1 through 128 as though fully set forth herein.

6 137. The lead agency must evaluate comments on the draft EIR and prepare written
7 responses for inclusion in the final EIR. Pub. Resources Code, § 21091(d); CEQA Guidelines, §§
8 15088(a), 15132. Conclusory statements unsupported by specific references to empirical
9 information, scientific authorities, or explanatory information are insufficient as responses to
10 comments made by agencies or the public. CEQA Guidelines, § 15088(c). Recommendations and
11 objections on major environmental issues that are rejected must be addressed in detail, and the
12 lead agency should explain its reasons for not accepting those suggestions. CEQA Guidelines, §
13 15088(c); *People v. County of Kern* (1976) 62 Cal.App.3d 761. The final EIR must acknowledge
14 any conflicting opinions and explain why suggestions made in the comments have been rejected,
15 supporting its statements with relevant data. See *Banning Ranch Conservancy v. City of Newport*
16 *Beach* (2017) 2 Cal.5th 918, 940; *Berkeley Keep Jets Over the Bay Comm. v. Board of Port*
17 *Comm'rs* (2001) 91 Cal.App.4th 1344, 1367, 1371.

18 138. Here, the EIS/EIR fails to meaningfully respond to comments regarding the project
19 description, baseline conditions, climate, mitigation measures, groundwater effects, water supply
20 effects, and fisheries, among others.

21 139. The EIS/EIR rejects comments regarding effects to private wells, and subsidence,
22 within the service area for Glenn-Colusa Irrigation District, without providing evidence supporting
23 its conclusions.

24 WHEREFORE, Plaintiffs pray for relief as hereinafter stated.

25 **THIRD CLAIM FOR RELIEF**

26 **VIOLATIONS OF PUBLIC TRUST DOCTRINE**

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

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1 140. Plaintiffs incorporate by reference each and every allegation contained in
2 Paragraphs 1 through 139 as though fully set forth herein.

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

8 WHEREFORE, Plaintiffs pray for relieve as hereinafter stated.

9 **FOURTH CLAIM FOR RELIEF**

10 **VIOLATIONS OF ENDANGERED SPECIES ACT**

11 **(By Plaintiffs against FWS)**

12 142. Plaintiffs incorporate by reference each and every allegation contained in
13 Paragraphs 1 through 141 as though fully set forth herein.

14 143. On May 17, 2019, FWS issued a BiOp for the Project regarding effects on GGS.
15 FWS' actions are arbitrary, capricious, fail to proceed as required by law, and not in accordance
16 with the ESA.

17 The Agency Action Analyzed in the BiOp is Not Coextensive with the Project

18 144. The FWS' BiOp, the Jeopardy Determination and the ITP violate the ESA because
19 they address an "agency action" that is not coextensive with the Project authorized by USBR.

20 145. USBR defines the Project, i.e. the "agency action," as "Alternative 2, Full Range of
21 Transfers (Proposed Action) involves reviewing, approving, and facilitating proposed transfers
22 over a five-year period."

23 146. The "agency action" addressed by FWS in the BiOp, however, is different. The
24 BiOp's analysis is limited to an agency action that includes transfers occurring only in "any two
25 years out of the remaining six years of the program (2019-2024)."

26 147. The FWS's jeopardy determination is also expressly premised on the assumption
27 water transfers will only occur during two of the remaining project years: "[I]t is the Service's
28

1 opinion that the two years of water transfers as proposed from 2019-2024, are not likely to
2 jeopardize the continued existence of the snake.” (BiOp, at p. 28).

3 148. Finally, the FWS’ ITS accompanying the BiOp is premised on the same assumed
4 “agency action” that water transfers will occur during only two of the remaining project years.

5 149. Contrary to FWS’s express assumptions, nothing in the Project limits the number of
6 years when transfer may occur. In an apparent attempt to address the clear difference, the BiOp
7 provides that “if transfers are proposed in more than two years, Reclamation will reinitiate
8 consultation...” The ESA prohibits such a segmented or incremental-step consultation process.
9 *Conner v. Burford*, supra, 848 F.2d at 1454-1455.

10 150. FWS’ analysis of the Project’s impact on GGS is clearly limited to evaluating the
11 potential effects of only two years of water transfers, which is a different “agency action” than
12 approved by USBR. Analyzing a project that is not coextensive with the agency action authorized
13 by USBR violates the ESA and fails to proceed in a manner required by law, by failing to evaluate
14 the effects of the entire agency action.

15 Conservation Measures Do Not Support A No Jeopardy Determination

16 151. The BiOp is arbitrary and capricious because the adopted conservation measures do
17 not support the BiOp’s no jeopardy determination for the GGS.

18 152. A BiOp is arbitrary and capricious if it fails to “consider the relevant factors and
19 articulate a rational connection between the facts found and the choice made.” *Ctr. for Biological*
20 *Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101, 1121 (9th Cir. 2012). Here, the BiOp
21 notes that rice fields “in particular” provide cover form predators and habitat for foraging during
22 the active season. (BiOp, at p. 25.) The BiOp further notes that that Project will cause a reduction
23 in rice fields and therefore “likely result in increased stress to snakes due to the loss of areas that
24 provide foraging opportunities, the loss of cover from known predators, and the potential for
25 reduced reproduction and recruitment.” (BiOp, at p. 26). Finally, the BiOp underscores the
26 importance of rice fields for cover, stating that “loss of rice lands will increase snake mortality
27 from predation if they are limited to occur in these conveyance canals and ditches.” (BiOp, at
28 p.26).

1 FWS' responsibility to advise “the action agency as to whether or not the action, taken together
2 with cumulative effects...is likely to jeopardize the continued existence of a listed species....”
3 *Conservation Cong. v. United States Forest Serv.*, 720 F.3d 1048, 1055 (9th Cir. 2013) (citing 50
4 C.F.R. § 401.12(g)(3)&(4) (internal quotations omitted).

5 **FIFTH CLAIM FOR RELIEF**

6 **VIOLATIONS OF ENDANGERED SPECIES ACT**

7 **(By Plaintiffs against USBR)**

8 157. Plaintiffs incorporate by reference each and every allegation contained in
9 Paragraphs 1 through 156 as though fully set forth herein.

10 158. As part of its decision to adopt “Alternative 2” as the proposed agency action,
11 USBR relies on its consultation with FWS over the impacts of the Project to the GGS and the
12 resulting 2019 BiOp to satisfy its obligations under the ESA.

13 159. The 2019 BiOp prepared by FWS is manifestly and legally flawed, including but
14 not limited to the following deficiencies: (i) it analyzes an action that is not coextensive with the
15 Project, (ii) it prescribes unlawful incremental step consultation (iii) it fails to adequately analyze
16 the complete cumulative effects of the Project, and (iv) it prescribes mitigation measures that fail
17 to consider an important aspect of the problem, are contradicted by other findings within the BiOp,
18 and are not based on the best scientific information available, as described above.

19 160. USBR has and continues to arbitrarily and capriciously rely on the 2019 BiOp to
20 fulfil its obligations under the ESA despite its critical legal flaws.

21 161. USBR’s arbitrary and capricious reliance on the flawed BiOp violates its obligation
22 under Section 7(a)(2) of the ESA to ensure that the Project does not jeopardize the continued
23 existence of the GGS. *Defs. of Wildlife, supra*, 420 F.3d at 976 (*accord Resources Limited, supra*,
24 35 F.3d at 1304).

25 WHEREFORE, Plaintiffs pray for relieve as hereinafter stated.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Petitioners and Plaintiffs pray for relief as follows:
28

- 1 1. Enter a declaratory judgment that the USBR violated NEPA by preparing an
- 2 inadequate EIS;
- 3 2. Enter a declaratory judgment that USBR violated the ESA by arbitrarily and
- 4 capriciously relying on the 2019 GGS BiOp prepared by FWS;
- 5 3. Vacate the USBR's Record of Decision for the Project;
- 6 4. Issue a peremptory writ of mandate commanding SLDMWA to vacate and set aside
- 7 its certification of the EIS/EIR, its approval of the Project, and any and all approvals rendered
- 8 pursuant to and/or in furtherance of all or any part of the Project;
- 9 5. Preliminarily and permanently enjoin Defendants from approving any water
- 10 transfers encompassed by the Project unless and until Defendants comply with the requirements of
- 11 NEPA, CEQA, the Public Trust Doctrine, and the ESA;
- 12 6. Permanently enjoin Defendants to return the affected environment to pre-Project
- 13 conditions unless and until the Projects are brought into full compliance with CEQA, NEPA, the
- 14 Public Trust Doctrine, and the ESA;
- 15 7. Enter declaratory judgment that FWS violated the ESA by preparing an inadequate
- 16 BiOp;
- 17 8. Vacate FWS's BiOp.
- 18 9. Award Plaintiffs the costs of this action, including their reasonable attorneys' fees;
- 19 and,
- 20 10. Grant other such relief as the Court deems just and proper.

21 DATED: January 8, 2021

AQUA TERRA AERIS LAW GROUP

23 /s/ Jason R. Flanders

24 Jason R. Flanders

25 Attorney for Plaintiffs

26 AquAlliance, and

27 California Sportfishing Protection Alliance

28 4030 Martin Luther King Jr. Way

Oakland, CA 94609

Email: jrf@atalawgroup.com

Phone: 916-202-3018

1
2 DATED: January 8, 2021

SOLURI MESERVE, A LAW CORPORATION

3
4 /s/ Patrick M. Soluri (as authorized on 01/08/2021)
5 Patrick M. Soluri
6 Attorney for Plaintiffs
7 Central Delta Water Agency, South Delta Water
8 Agency
9 510 8th Street
10 Sacramento, CA 95814
11 Email: patrick@semlawyers.com
12 Phone: (916) 455-7300

13
14 **VERIFICATION**

15 I, Jason Flanders, am counsel of record for Petitioners and Plaintiffs AquAlliance,
16 California Sportfishing Protection Alliance, California Water Impact Network. I sign for these
17 Petitioners and Plaintiffs absent from the county of counsel and/or because facts contained in the
18 First Amended Petition and Complaint are within the knowledge of counsel. I have read the
19 foregoing First Amended Petition and Complaint know the contents thereof. The same is true of
20 my own knowledge, except as to those matters that are alleged on information and belief, and as to
21 those matters, I believe them to be true.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed this 8th day of January 2021, in Oakland, California.

24 /s/ Jason R. Flanders
25 Jason R. Flanders

26 I, Patrick Soluri, am one of the attorneys of record for Petitioners and Plaintiffs Central
27 Delta Water Agency and South Delta Water Agency in the above-entitled action, and am
28 authorized to execute this verification on their behalf. I sign for these Petitioners and Plaintiffs
absent from the county of counsel and/or because facts contained in the First Amended Petition
and Complaint are within the knowledge of counsel. I have read the foregoing First Amended
Petition and Complaint and know the contents thereof. The same is true of my own knowledge,

1 except as to those matters which are therein alleged on information and belief, and as to those
2 matters, I believe it to be true.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 8th day of January 2021, in Sacramento, California.

5
6 /s/ Patrick M. Soluri
7 Patrick M. Soluri
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