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14 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SACRAMENTO**

16 Friends of the River; Center for Biological
17 Diversity; Center for Food Safety; Sierra Club
18 California; Restore the Delta; Planning and
19 Conservation League,

20 Petitioners and Plaintiffs,

21 vs.

22 Delta Stewardship Council; and DOES 1-20,

23 Respondents and Defendants,

24 DOES 21-50,

25 Real Parties in Interest.

Case No.:

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

(Code of Civ. Proc. §§ 1060, 1085, 1094.5; Water
Code § 85000, *et seq.*; Gov. Code 11342.1; Pub.
Resources Code § 21000, *et seq.*)

CEQA CASE

BY FAX



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I. INTRODUCTION

1. Petitioners and Plaintiffs Friends of the River, Center for Biological Diversity, Center for Food Safety, Sierra Club California, Restore the Delta, and Planning and Conservation League (“Petitioners”) file this petition and complaint seeking a writ of mandate under California Code of Civil Procedure sections 1085 and 1094.5 and relief under Code of Civil Procedure section 1060 and Government Code section 11350 directing the Delta Stewardship Council (“DSC”) to vacate its approval of the Delta Plan Amendments on Conveyance, Storage Systems, and the Operation of Both (CSO) and on Performance Measures (“Project”), the April 26, 2018 Findings and Statement of Overriding Considerations for the Delta Plan Amendments (“Findings”), the April 26, 2018 certification of the Final Program Environmental Impact Report (“PEIR”), and to revise its findings to conform with the law. Petitioners allege that the approval of the Plan Amendments violated the Delta Reform Act codified at Water Code section 85000, *et seq.* Petitioners allege that the DSC’s approval of the Plan Amendments and certification of the PEIR violated the California Environmental Quality Act (CEQA) codified at Public Resources Code section 21000, *et seq.* The PEIR prepared by the DSC is legally insufficient under CEQA.

2. Despite a Superior Court ruling in 2016 setting aside the 2013 Delta Plan because it violated the Delta Reform Act, the DSC has acted as though the Court did not vacate the 2013 Plan. Petitioners also seek relief vacating the 2013 Delta Plan approval and 2013 PEIR certification.

3. The DSC has also proceeded by preparing a “Program EIR” under CEQA instead of preparing a Project-specific EIR, ignoring the practical reality of the July 21, 2017 final approval by the California Department of Water Resources (DWR) of the California WaterFix Project consisting of the Delta Water Tunnels. The San Francisco Bay-Delta needs more freshwater flowing through it, not less. Presently, water for export is diverted from the South Delta. As a result, Delta public health, agriculture, freshwater flows, water supply, water quality and fisheries benefit by the fact that freshwater flows through the Delta before being diverted. This is called “through-Delta conveyance.” The approved WaterFix Tunnels would worsen the existing crisis in the Delta by diverting massive quantities of freshwater upstream, from the North Delta. The new diversion from the North Delta along

1 with the continued diversion from the South Delta is called “dual conveyance” as diversions from the
2 South Delta would continue.

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4 **II. THE PARTIES**

5 4. Petitioner FRIENDS OF THE RIVER (“FOR”) is a non-profit organization dedicated
6 to preserving and restoring California's rivers, streams, and their watersheds as well as advocating for
7 sustainable water management. FOR accomplishes this goal by influencing public policy and inspiring
8 citizen action through grassroots organizing. FOR was founded in 1973 during the struggle to save the
9 Stanislaus River from the New Melones Dam. Following that campaign, the group grew to become a
10 statewide river conservation organization. FOR currently has nearly 3,000 members. Members of FOR
11 enjoy the scenic beauty of the Delta and the Sacramento River and its tributaries and sloughs upstream
12 from the Delta and raft, kayak, boat, fish, and swim in these waters.

13 5. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“The Center”) is a non-profit,
14 public interest organization with over 60,000 active members. The Center has offices in Oakland, Los
15 Angeles, and Joshua Tree, California, as well as offices in Arizona, Florida, New Mexico, Oregon, and
16 Washington, D.C. The Center and its members are dedicated to protecting diverse native species and
17 habitats through science, policy, education, and environmental law. The Center’s members reside and
18 own property throughout California as well as those areas to be served by the Project, and use the
19 waters and lands affected by the proposed Project.

20 6. Petitioner CENTER FOR FOOD SAFETY (“CFS”) is a national nonprofit public
21 interest and environmental advocacy organization working to protect human health and the
22 environment by promoting sustainable agriculture. CFS has over 750,000 members across the country,
23 with approximately 92,000 residing in California, including farmers, businesses, and consumers whose
24 economic and personal wellbeing depends upon decisions regarding food production and equitable
25 water distribution. CFS takes a holistic approach in pursuing its mission, using legal actions, scientific
26 and policy reports, educational events, marketing campaigns, and grassroots organizing. CFS members
27 farm, fish, eat, drink, research, and recreate within the Delta ecosystem, the Central Valley, and the San
28 Francisco Bay Area and would be affected by the Project and its significant impacts.

1 7. Petitioner SIERRA CLUB CALIFORNIA is a nonprofit organization of approximately
2 180,000 members in California. Sierra Club California is dedicated to exploring, enjoying, and
3 protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's
4 ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of
5 the natural and human environment; and to using all lawful means to carry out these objectives. Sierra
6 Club California's concerns encompass our members continued ability to enjoy the unique aesthetic and
7 recreational nature of the Bay-Delta ecosystem, our desire for California to develop a climate change-
8 resilient water system that is protective of both natural environments and fulfilling the human right to
9 water, and the proper application of the California Environmental Quality Act to provide the public
10 with vital information about decisions made concerning their health and mitigation from environmental
11 harms. The Club's particular interest in this case and the issues, which the case concerns, are addressed
12 herein.

13 8. Petitioner PLANNING AND CONSERVATION LEAGUE is a nonprofit advocacy
14 organization empowered to protect and restore California's natural environment and to promote and
15 defend the public health and safety of the people of California, through legislative, administrative, and
16 judicial action. Founded in 1965, PCL was the first organization devoted to bettering Californians'
17 quality of life through environmental legislation. One of the organization's earliest accomplishments
18 was the enactment in 1970 of the California Environmental Quality Act ("CEQA"), which PCL helped
19 draft and has continually supported over the years, and which lies at the heart of this action. As a party
20 and an amicus curiae, PCL—in behalf of its twenty-seven institutional members and thousands of
21 individual members—has contributed to some of the leading cases interpreting CEQA's provisions.
22 PCL has also submitted detailed comments addressing environmental review issues in numerous
23 proceedings before public agencies, including those culminating in the final agency decisions
24 challenged here. Beyond agency proceedings and the courtroom, PCL has published and updated The
25 Community Guide to CEQA and has sponsored CEQA workshops throughout the state. These
26 workshops advise interested individuals, governmental and non-governmental organizations, and
27 locally elected and appointed officials about CEQA's two-fold purpose of environmental protection and
28 informed self-government. PCL members reside and own property throughout California as well as

1 those areas to be served by the Project, and use the waters and lands affected by the proposed Project.

2 9. Petitioner RESTORE THE DELTA (“RTD”) is a non-profit public benefit organization
3 based in Stockton, California. RTD is a coalition of Delta residents, business leaders, civic
4 organizations, community groups, faith-based communities, union locals, farmers, fishermen, and
5 environmentalists seeking to strengthen the health of the Bay-Delta estuary and to protect the economic
6 interests of the Sacramento-San Joaquin Delta, including but not limited to fishing, farming, recreation,
7 and tourism. With over 30,000 members statewide, RTD advocates on behalf of local Delta
8 stakeholders to ensure that water management decisions will protect and benefit Delta communities.
9 Members of RTD reside in and along the Bay-Delta and its watershed and use the waters of the Central
10 Valley and Bay-Delta for aesthetic, recreational, and educational enjoyment.

11 10. Respondent CALIFORNIA DELTA STEWARDSHIP COUNCIL (“DSC”) is an
12 independent agency of the State of California subject to all California law, and created under
13 Sacramento-San Joaquin Delta Reform Act of 2009 (“Delta Reform Act”)(Wat. Code § 85000 et. seq.).
14 The DSC is the lead agency for the preparation of the Delta Plan and certification of the EIR for the
15 Delta Plan under the California Environmental Quality Act (CEQA).

16 11. Petitioners are currently unaware of the true names and capacities of Does 1 through
17 20, inclusive, and therefore sue those parties by such fictitious names. Does 1 through 20, inclusive, are
18 agents of the State government who are responsible in some manner for the conduct described in this
19 petition, or other persons or entities presently unknown to the Petitioners who claim some legal or
20 equitable interest in the program that is the subject of this action. Petitioners will amend this petition to
21 show the true names and capacities of Does 1 through 20 when such names and capacities become
22 known.

23 12. Petitioners are currently unaware of the true names and capacities of Does 21 through
24 50, inclusive, and therefore sue those parties by such fictitious names. Does 21 through 50, inclusive,
25 are persons or entities presently unknown to the Petitioners who claim some interest as a real party in
26 interest in the program that is a subject of this action. Petitioners will amend this petition to show the
27 true names and capacities of Does 21 through 50 when such names and capacities become known.
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1 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 13. Petitioners have exhausted all administrative remedies by submitting written comments
3 and making oral comments during several stages of the Delta Plan Amendments and Environmental
4 Impact Report (EIR) process, including but not limited to submitting comments highlighting Delta
5 Reform Act and CEQA deficiencies on the Delta Plan Amendments and on the DSC’s Notice of
6 Preparation of PEIR filed on March 16, 2017, the Draft PEIR issued for public review and comment on
7 November 1, 2017, and the Final PEIR issued on April 26, 2018. All issues raised in this petition were
8 raised before by Petitioners, other members of the public, and/ or public agencies prior to approval of
9 the Delta Plan Amendments and certification of the PEIR. Petitioners likewise exhausted all
10 administrative remedies prior to the DSC adoption of a Delta Plan and certification of a PEIR on May
11 17, 2013.

12 14. Petitioners presented both oral and written comments during the administrative process
13 and hearings on the matters being challenged in this petition.

14 15. Petitioners have complied with Public Resources Code section 21167.5 by prior service
15 of a notice upon the DSC indicating their intent to file this Petition. Proof of Service of this notification,
16 with the notification, is attached as Exhibit A to this Petition.

17 16. The Petitioners have elected to prepare the record of proceedings in the above-
18 captioned proceeding or to pursue an alternative method of record preparation pursuant to Pub.
19 Resources Code section 21167.6(b)(2). A true and correct copy of the notification of the Election to
20 Prepare the Administrative Record is attached as Exhibit B to this Petition.

21 17. This petition is timely filed in accordance with Public Resources Code section 21167
22 and CEQA Guideline section 15112 (the CEQA Guidelines are codified at 14 Cal. Code Regs. § 15000,
23 *et seq.*)

24 18. The Petitioners and their members are directly, adversely and irreparably affected, and
25 will continue to be prejudiced by the Delta Plan Amendments and by the failure of the DSC to comply
26 with the Delta Reform Act and CEQA unless or until this Court provides the relief prayed for in this
27 petition.
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IV. JURISDICTION AND VENUE

19. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure sections 1085, 1094.5, and 1060, Public Resources Code sections 21168 and 21168.5, and Government Code sections 11342.2 and 11350.

20. Venue for this action properly lies in the Sacramento County Superior Court because the adopted Plan Amendments would increase diversions of freshwater upstream from the Delta resulting in adverse environmental impacts because of reducing the flushing of the Delta by outflows from the Sacramento River. In addition, Petitioners Friends of the River, Planning and Conservation League, and Sierra Club California, as well as Respondent DSC and the Attorney General, who will be representing Respondent DSC in this action, have offices in Sacramento County. Moreover, when actions were filed in three different counties against the DSC in 2013 challenging the DSC's adoption of the Delta Plan, the actions were all coordinated during the coordination process in the Sacramento County Superior Court. Those cases are known as the Delta Stewardship Council Cases, Judicial Council Coordination Proceeding No. 4758, assigned to Judge Michael P. Kenny, Department 31.

V. GENERAL ALLEGATIONS

21. In 2009, the California Legislature declared that "the Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable," and responded by passing the Delta Reform Act ("Act"), California Water Code § 85000, *et seq.*

22. The Act required the DSC to adopt a Delta Plan. (Wat. Code § 85300.) The Plan is defined to be "the comprehensive, long-term management plan for the Delta" (Wat. Code § 85059.)

23. The Act established State policy objectives including restoring the Delta ecosystem and its fisheries and wildlife as the heart of a healthy estuary and wetland ecosystem, Wat. Code § 85020(c); promoting statewide water conservation, water use efficiency, and sustainable water use, Wat. Code § 85020(d); and improving water quality to protect human health and environment

1 consistent with achieving water quality objectives in the Delta, Wat. Code § 85020(e). The Act further
2 declared that “the policy of the State of California is to reduce reliance on the Delta in meeting
3 California’s future water supply needs through a statewide strategy of investing in improved regional
4 supplies, conservation, and water use efficiency” (Wat. Code § 85021.)

5 24. The Act required that the Delta Plan “shall include measures that promote all of the
6 following characteristics of a healthy Delta ecosystem: (1) viable populations of native resident and
7 migratory species; (2) functional corridors for migratory species; (3) diverse and biologically
8 appropriate habitats and ecosystem processes; (4) reduced threats and stresses on the Delta ecosystem;
9 and (5) conditions conducive to meeting or exceeding the goals in existing species recovery plans and
10 state and federal goals with respect to doubling salmon populations. (Wat. Code § 85302(c).) The Act
11 also required the Delta Plan to include “seven goals and strategies for restoring a healthy ecosystem”
12 including (4) “[restoring] Delta flows and channels to support a healthy estuary and other ecosystems,”
13 and (5) “[improving] water quality to meet drinking water, agriculture, and ecosystem long-term
14 goals.” (Wat. Code § 85302(e).)

15 25. The Act required that the Delta Plan “[i]nclude quantified or otherwise measurable
16 targets associated with achieving the objectives of the Delta Plan.” (Wat. Code § 85308.)

17 26. The Act was intended to further the “co-equal goals” of increased environmental
18 protection and increased water reliability for the Delta. “‘Coequal goals’ means the two goals of
19 providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta
20 ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique
21 cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat.
22 Code § 85054.)

23 27. The Act established the Delta Stewardship Council to provide for “the sustainable
24 management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water
25 supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish
26 a governance structure that will direct efforts across state agencies to develop a legally enforceable
27 Delta Plan.” (Wat. Code § 85001(c)).

28 28. The DSC adopted a Delta Plan and certified a PEIR (“2013 PEIR”), made CEQA

1 Findings of Fact, and filed a Notice of Determination on May 17, 2013. Three of these same
2 petitioners, Friends of the River, Center for Biological Diversity, and Restore the Delta filed an action
3 alleging that the 2013 adoption of the Delta Plan and certification of the 2013 PEIR violated the Delta
4 Reform Act and CEQA. These three petitioners were among those who obtained a Judgment of
5 November 23, 2016, Granting Peremptory Writ of Mandate in *Central Delta Water Agency et al. v.*
6 *Delta Stewardship Council* (S.F. Superior Court Case No. CPF13513048) and *California Water Impact*
7 *Network et al. v. Delta Stewardship Council* (S.F. Superior Court Case No. CPF13513047), Superior
8 Court, County of Sacramento, Judicial Council Coordination Proceeding No. 4758, Dept. 31, Judge,
9 Michael Kenny. A true and correct copy of the Judgment is attached as Exhibit C to this Petition.

10 29. Paragraph 1 of the 2016 Judgment provides that Judgment is entered in favor of the C-
11 WIN petitioners, which included these petitioners: Friends of the River, Center for Biological
12 Diversity, and Restore the Delta, and against the DSC on their First Cause of Action, which alleged
13 Delta Reform Act violations.

14 30. Paragraphs 2, 3, and 4 of the 2016 Judgment provided: pursuant to stipulation by the
15 parties, that the Court had not resolved any CEQA claims alleged in the action; all existing CEQA
16 claims are preserved; and no defenses including but not limited to statute of limitations, laches,
17 exhaustion of administrative remedies, and estoppel, shall apply to petitioners re-pleading or
18 resurrection of their existing CEQA claims at a later date. Paragraph 5 of the 2016 Judgment provided
19 that “To the extent Respondent relies on the 2013 Program EIR in the future, Respondent shall—as part
20 of that reliance—adopt new CEQA findings and recertify the 2013 Program EIR, along with taking
21 action on the other CEQA documentation it deems appropriate. Respondent shall also file a CEQA
22 Notice of Determination that reflects the full extent of this reliance.

23 31. Paragraph 6 of the 2016 Judgment provides:

24
25 A Peremptory Writ of Mandate (“Writ”) shall issue from the Court to Respondent [DSC],
26 ordering Respondent to vacate and set aside the Delta Plan and any applicable regulations
27 and revise the Delta Plan and any applicable regulations to: (a) include quantified or
28 otherwise measurable targets associated with achieving reduced Delta reliance, reduced
environmental harm from invasive species, restoration of more natural flows, and
increased water supply reliability, in compliance with the Delta Reform Act; (b) provide
a flow policy that includes “quantified or otherwise measurable targets;” and (c) comply

1 with the Delta Reform Act section 85304 requirement that the plan “promote options for
2 new and improved infrastructure relating to the water conveyance in the Delta, storage
3 systems, and for the operation of both to achieve the coequal goals.” Nothing in the Writ
4 shall limit or control the discretion legally vested in Respondent.

5 32. Paragraph 7 of the Writ commanded “Respondent to make and file an Initial Return
6 within 120 days after issuance of the Writ, setting forth what it has done to comply with the Writ, and
7 such further Return as the Court may direct.”

8 33. The DSC has not complied with the Judgment and Writ. The DSC never filed the
9 required return to the Writ. The DSC instead filed a notice of appeal. The DSC’s appeal is presently
10 pending in the Third District Court of Appeal, *Delta Stewardship Council Cases*, No. C082944.

11 34. The DSC posted a Notice of Preparation of a Draft Program EIR on March 16, 2017
12 with respect to the proposed Delta Plan Amendments. Over intense public opposition from then until
13 June 22, 2017, the DSC on June 22, 2017 proceeded to prepare a Draft Program EIR on the Delta Plan
14 Amendments without making any of the changes requested by members of the public such as
15 complying with the Superior Court Judgment, including the required range of reasonable alternatives or
16 developing the information and analysis necessary to allow informed development and consideration of
17 alternatives. The DSC issued the Draft PEIR for public review and comment on November 1, 2017.

18 35. The DSC certified the 2018 PEIR, approved the Delta Plan Amendments, approved
19 the Findings and Statement of Overriding Considerations, and filed the Notice of Determination
20 pertaining to certification of the PEIR on April 26, 2018.

21 36. To inform the planning processes of the Delta Plan and the Bay Delta Conservation
22 Plan, the Act mandated the State Water Resources Control Board (“SWRCB” or “Board”), pursuant to
23 its public trust obligations, to develop new flow criteria for the Delta ecosystem necessary to protect
24 public trust resources. (Wat. Code § 85086(c)(1).) The Board complied by issuing a report titled
25 *Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem* on 3 August 2010.
26 The 2013 and 2018 PEIRs failed to disclose, consider, analyze or incorporate the findings, flow criteria
27 and other recommendations contained in the report. The 2013 and 2018 PEIRs failed to comply with
28 CEQA.

1 by DWR and the U.S. Bureau of Reclamation in December 2016. DWR gave final approval to the
2 specific WaterFix Delta Water Tunnels Project on July 21, 2017, issuing its Notice of Determination
3 and CEQA Findings on the approval on that same date. The WaterFix Tunnels Project is so specific and
4 so final that DWR also filed a complaint for Validation in the Superior Court, County of Sacramento,
5 on that same date, seeking to validate issuance of WaterFix Revenue bonds of \$8.8 billion to finance
6 construction of the massive project. The approved Tunnels Project would have an overall length of
7 about 45 miles. The two tunnels would each have a length of about 30 miles, and an inside diameter of
8 40 feet. The 3 intake structures would each have a conveyance capacity of 3,000 cubic feet per second
9 (cfs), amounting to a total conveyance capacity of 9,000 cfs. The Tunnels would have a capacity of
10 about 15,000 cfs, which is typically the entire summer freshwater flow of the Sacramento River in the
11 vicinity of the proposed diversion points near Clarksburg.

12 43. The Delta Plan Amendments incorporate or facilitate the WaterFix Tunnels Project by
13 recommendation WR R12a stating that DWR and the Bureau of Reclamation, as well as local
14 beneficiary agencies:

15 should pursue a dual-conveyance option for the Delta. Dual conveyance is a combination
16 of through-Delta conveyance and isolated conveyance to allow operational flexibility. . .
17 Dual conveyance should incorporate existing and new intakes and facility improvements
18 for both isolated, below-ground conveyance and through-Delta conveyance of State Water
19 Project (SWP) and Central Valley Project (CVP) water supplies from the Sacramento
20 River to the south Delta, . . (App. A, Revisions to Text of Proposed Delta Plan
21 Amendments, p. 126, April 2018.)

22 That provision incorporates the Water Fix Tunnels Project into the Delta Plan because that is the
23 Project that received DWR's final approval on July 21, 2017. There is no other "dual conveyance
24 option" that has received final approval.

25 44. The 2018 PEIR was misrepresented to be a Program EIR. A Program EIR is done prior
26 to a specific project level EIR. A Program EIR is not supposed to be a post hoc rationalization in
27 support of an action already taken. A Program EIR analyzes the general so the later project-specific
28 EIR can utilize the effort in assessing environmental impacts. Here, the DSC did the opposite, issuing a
Draft Program EIR more than three months after DWR's final approval of the specific WaterFix
Tunnels Project, and issuing the Final PEIR nine months after DWR's final approval of the specific

1 WaterFix Tunnels Project.

2 45. Instead of flagging the WaterFix Project in the Executive Summary or chapter 9 on
3 Alternatives, the Draft PEIR gave a brief false and misleading description of the WaterFix Project as an
4 “example project for conveyance.” (Draft PEIR, Chapter 4 (pp. 4-14, 4-15.) The WaterFix Tunnels
5 Project was no mere example of a possible project. The Tunnels Project approval was so final that
6 DWR filed a Validation action to validate the issuance of over \$8 billion of bonds to pay for
7 construction of the Project, more than three months before the Draft PEIR was issued for public review
8 and comment.

9 **Additional General Allegations**

10 46. Petitioners and others identified numerous legal deficiencies in the Delta Plan
11 Amendments and the regulatory process in which the Plan Amendments and the 2018 PEIR were
12 created. The DSC’s certification of the 2018 PEIR, approval of the Delta Plan Amendments, and
13 approval of the Findings and Statement of Overriding Considerations violated the Delta Reform Act
14 and CEQA.

15 47. The DSC has abused its discretion and failed to act as required by law. As result of the
16 DSC’s approval of the Delta Plan Amendments and certification of the PEIR in 2018, and certification
17 of the 2013 PEIR, Petitioners and their members will suffer great and irreparable harm to their interests,
18 including recreation, boating, kayaking, fishing (including subsistence fishing), conservation, wildlife
19 viewing, and other activities as described herein. Petitioners have no adequate remedy at law for this
20 irreparable harm.

21 48. The 2018 Delta Plan Amendments will harm pelagic and anadromous fisheries in the
22 Bay-Delta and its watershed by failing to consider the timing and quantity of flows to ensure ecosystem
23 health, by encouraging and catalyzing the construction of new upstream conveyance and water storage,
24 and by prioritizing water deliveries over ecosystem restoration. Harm to the pelagic and anadromous
25 fishery in the Bay-Delta and its watershed harms Petitioners and their members by threatening
26 impairment of their use and enjoyment of these species and their habitat, and other uses and activities
27 they enjoy.

28 49. The DSC’s failure to proceed in the manner required by law, failure to comply with

1 CEQA prior to adopting the 2013 Delta Plan, and prior to adopting the 2018 Delta Plan Amendments,
2 and the resulting certifications of the 2013 PEIR and the 2018 PEIR, will result in a new, isolated
3 upstream conveyance that has the capacity to further reduce the already significantly depleted
4 freshwater flows in the Sacramento River, its tributaries, sloughs, and the Delta and the Bay. Such a
5 project would increase exports, contrary to the Act's requirement to reduce reliance on the Delta for
6 California's future water needs. Petitioners and their members will suffer great and irreparable injury
7 caused by the reduced flows into and through the Delta that will result from implementation of the
8 Delta Plan and Delta Plan Amendments and their policies and recommendations which in turn will
9 harm fisheries habitat subsistence fishing, drinking water quality of urban and rural Delta residents, and
10 recreational opportunities at locations in and upstream of the Bay-Delta.

11 50. Mismanagement of water resources in the Bay-Delta because of the Delta Plan
12 Amendments will deplete local rivers, sloughs, and lakes, and harm salmonids that travel through the
13 lakes and streams used and enjoyed by Petitioners and their members.

14 VI. FIRST CAUSE OF ACTION

15 (Delta Reform Act)

16 (Cal. Water Code § 85000, *et seq.*; Cal. Gov. Code § 11342.2)

17 51. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully
18 set forth herein.

19 52. The Legislature requires the Delta Plan to contain specific, reasoned, measurable
20 objectives for Delta restoration, as well as thoughtful, reasoned paths towards achieving the co-equal
21 goals in the Delta. The Delta Plan Amendments utterly fail to achieve these mandates.

22 53. The Delta Reform Act established DSC as an independent agency of the state,
23 empowering it to achieve the state mandated "coequal goals for the Delta." (Wat. Code § 85200.)
24 Those goals are: (1) to provide a more reliable water supply for California, and (2) to protect, restore,
25 and enhance the Delta ecosystem. (Wat. Code § 85054.)

26 54. The Delta Plan Amendments, 2013 PEIR, and 2018 PEIR fail to define how the Delta
27 Plan achieves the "coequal goals," and failed to establish quantifiable goals, or measurements for
28

1 achieving the goals of the plan and the requirements of the Act.

2 **Measurable Targets to Achieve Goals Lacking**

3 55. The DSC failed to revise the Delta Plan to include quantified or otherwise measurable
4 targets associated with achieving reduced reliance on the Delta, restoration of more natural flows, and
5 provide a flow policy including quantified or otherwise measurable targets. The DSC failed to properly
6 comply with the Delta Reform Act requirement that the Plan “promote options for new and improved
7 infrastructure relating to the water conveyance in the Delta, storage systems, and for the operation of
8 both to achieve the coequal goals.” (Wat. Code § 85304.) These failures violated the Act including
9 Water Code section 85308(b) and the 2016 Judgment.

10 56. The DSC failed to revise the Delta Plan to include the measures promoting the
11 characteristics of a healthy Delta ecosystem required by the Act in Water Code sections 85302(c) and
12 (e).

13 57. The Act in Water Code section 85320(b)(2) includes specific requirements for
14 comprehensive review of specific subjects of any new upstream conveyance which at the time was the
15 BDCP, now called the Bay Delta Conservation Plan/California WaterFix:

16 *(A) A reasonable range of flow criteria, rates of diversion, and other operational criteria*
17 *required to satisfy the criteria for approval of a natural community conservation plan as*
18 *provided in subdivision (a) of Section 2820 of the Fish and Game Code, and other*
19 *operational requirements and flows necessary for recovering the Delta ecosystem and*
20 *restoring fisheries under a reasonable range of hydrologic conditions, which will identify*
21 *the remaining water available for export and other beneficial uses.*

22 *(B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual*
23 *conveyance, and isolated conveyance alternatives and including further capacity and*
24 *design options of a lined canal, an unlined canal, and pipelines.*

25 *(C) The potential effects of climate change, possible sea level rise up to 55 inches, and*
26 *possible changes in total precipitation and runoff patterns on the conveyance alternatives*
27 *and habitat restoration activities considered in the environmental impact report.*

28 *(D) The potential effects on migratory fish and aquatic resources.*

[deletions]

(G) The potential effects of each Delta conveyance alternative on Delta water quality.

(Emphasis added.)

58. Under subsection A of section 85320(b)(2), the required task is to determine “the
operational requirements and flows necessary for recovering the Delta ecosystem and restoring
fisheries.” That in turn would “identify the remaining water available for export and other beneficial

1 uses.” The DSC has not determined the operational requirements and flows necessary for recovering
2 the Delta ecosystem and restoring fisheries. The DSC has not identified the remaining water available
3 for export and other beneficial uses.

4 59. Instead of actually doing what the Act requires, the DSC admitted that none of the
5 necessary information and analysis such as operational requirements and flows necessary for
6 protecting, restoring and enhancing the Delta ecosystem had been determined, by its recommendation
7 WR 12b, calling upon project proponents to do the analysis. (App. A, Revisions to Text of Proposed
8 Delta Plan Amendments, p. 127, April 2018.)

9 **Unlawful Incorporation of the BDCP/WaterFix Project into the Delta Plan**

10 60. The DSC’s Delta Plan Amendment calling on DWR and other agencies to “pursue a
11 dual-conveyance option for the Delta” including “below-ground conveyance,” violated the Act because
12 the DSC has failed to first determine the operational requirements and flows necessary for recovering
13 the Delta ecosystem and restoring fisheries, and has failed to identify the remaining water available for
14 export and other beneficial uses.

15 61. The Act provides in Water Code § 85320(b) that:

16 (b) *The BDCP shall not be incorporated into the Delta Plan and the public benefits*
17 *associated with the BDCP shall not be eligible for state funding, unless the BDCP*
18 *does all of the following:*

19 (1) *Complies with Chapter 10 (commencing with Section 2800) of Division 3 of the*
20 *Fish and Game Code [the “Natural Community Conservation Planning Act”].*
21 (Emphasis added.)

22 The Final PEIR admits that the WaterFix Tunnels are no longer a Natural Community
23 Conservation Plan (NCCP). (Final PEIR p. 3-5.) At the March 2017 meeting of the Metropolitan
24 Water District Special Committee on the Bay Delta, the Manager of MWD’s Bay-Delta
25 Initiatives Program explained, among other things, that “The [Delta Plan] amendments would
26 promote options for new and improved conveyance including dual conveyance, and that’s what
27 California WaterFix is by definition.” By incorporating the WaterFix Project by amendment into
28 the Delta Plan in the guise of merely being a “recommendation” to “pursue a dual-conveyance
option” that “should incorporate existing and new intakes . . . for both isolated, below ground

1 conveyance and through-Delta conveyance”, the DSC is violating the Act because the current
2 Project is not a NCCP.

3 62. The Draft PEIR misled the public about the Project. The Draft PEIR stated (ch. 4, p. 4-
4 1) that:

5 The proposed Delta Plan Amendments (proposed Project or proposed amendments) do not
6 involve construction or operation of specific facilities or other specific physical actions by
7 the Delta Stewardship Council (Council) . . .

8 Given both the plan-level nature of the Proposed Project policies and recommendations
9 and the uncertainty concerning the extent to which the Proposed Project will result in any
10 particular action, it is difficult to identify all specific projects and when they could be
11 implemented as a result of the Proposed Project’s policies and recommendations.

12 That was false. Months before the Draft PEIR was issued, the specific WaterFix Tunnels Project was
13 given final approval on July 21, 2017 by DWR.

14 63. The DSC could not lawfully adopt a Plan Amendment on conveyance until after
15 revising the Delta Plan to include the measures to promote the characteristics of a healthy Delta
16 ecosystem set forth in the Act, Wat. Code § 85302(c) and (e), revising the Delta Plan to include
17 quantified or otherwise measurable targets associated with achieving reduced Delta reliance, restoration
18 of more natural flows, and increased water supply reliability, providing a flow policy that includes
19 quantified or otherwise measurable targets, and including the other provisions required by the 2016
20 Judgment and the Act.

21 64. The DSC designed the Plan Amendments, Draft, and Final PEIR to accommodate the
22 WaterFix Tunnels Project rather than first determining what the Bay-Delta, upstream watershed, and
23 public trust resources could accommodate. As an example, the Draft PEIR dismissed Alternative 1,
24 entitled “Reduced Reliance on the Delta Emphasis,” as not “fully achiev[ing] any of the conveyance-
25 related objectives” of the project. (Draft PEIR p. 9-29.)

26 65. The DSC had the objective to require increased reliability of water available for
27 exports. (Draft PEIR, ES-5.) That objective which permeates the Plan Amendments violates the Act
28 because it is counter to the goal of achieving reduced Delta reliance for California’s future water needs
while restoring more natural flows. As such the Delta Plan Amendments fail to acknowledge that
increased water supply reliability is achievable by reducing Delta reliance for California’s future water

1 needs; if less water is exported from the Delta on average, such an amount may be more reliably
2 exported over the long term.

3 66. As alleged above in the general allegations, the failures of the 2013 and 2018 DSC
4 processes to use the SWRCB's flow criteria and Department of Fish and Game 2010 Report to inform
5 its planning processes violated the act. (Wat. Code §§ 85086(c)(1) and 85084.5.)

6 **Performance Measures Necessary to Track Progress Towards Meeting Goals**

7 67. The DSC and the Delta Plan fail to establish the performance measures as required by
8 Water Code section 85302. The Delta Plan is required to include measures to promote a more reliable
9 water supply, restore a healthy ecosystem using the best available science, and incorporate quantified,
10 measurable targets for achieving the objectives of the Plan. (Wat. Code §§ 85302, 85308.) The Delta
11 Reform Act requires that the implementation of the Delta plan further these goals while describing the
12 measures by which the DSC can measure progress towards furthering those goals. In doing so, the
13 Delta Plan requires that these measures promote all of the following:

- 14 (1) Viable populations of native resident and migratory species;
- 15 (2) Functional corridors for migratory species;
- 16 (3) Diverse and biologically appropriate habitats and ecosystem processes;
- 17 (4) Reduced threats and stresses on the Delta ecosystem;
- 18 (5) Conditions conducive to meeting or exceeding the goals in existing species
19 recovery plans and state and federal goals with respect to doubling salmon
20 populations. (Wat. Code § 85302.)

21 68. The Delta Plan Amendments were required to contain specific, reasoned, measurable
22 objectives for Delta restoration, as well as thoughtful, reasoned paths towards reducing Delta reliance
23 and achieving the co-equal goals in the Delta. The DSC and the Delta Plan failed to include or consider
24 Delta flow objectives which specified the amount and timing of water necessary to restore the Delta,
25 and further failed to include quantified, measurable targets for achieving Delta Plan objectives as
26 required by Water Code sections 85302 and 85308. The Delta Plan Amendments must include
27 performance measurements that will enable the DSC to track progress in meeting the objectives of the
28 Delta Plan. (Wat. Code § 85211). The performance measurements must be measurable assessments of

1 the ability of the Delta's estuary to support viable species and their habitats, as well as measurable
2 assessments of the reduction in and reliability of water imported from the Sacramento River or the San
3 Joaquin River watershed. (Wat. Code §§ 85021 and 85211.)

4 69. Without determining the volume, quality, and timing of water necessary for the health
5 of the Delta ecosystem, the DSC is incapable of developing meaningful performance measurements
6 that will track progress towards the objectives in the Delta plan as required by Water Code section
7 85211. The DSC's approval of Delta Plan Amendments that omitted meaningful performance
8 measurements violated the Act pursuant to Water Code section 85211.

9 70. Petitioners seek declaratory relief pursuant to Code of Civil Procedure section 1060 and
10 Government Code section 11350, as well as a Writ of Mandate determining that the Delta Plan
11 Amendments conflict with the Delta Reform Act and are not reasonably necessary to effectuate the
12 purposes of the Act.

13 **VII. SECOND CAUSE OF ACTION**

14 **VIOLATIONS OF CEQA**

15 **(Public Resources Code § 21000, *et seq.*)**

16
17 71. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully
18 set forth herein.

19 72. CEQA applies to most public agency decisions to carry out, authorize, or approve
20 projects that could have adverse effects on the environment. (Pub. Resources Code, §§ 21000; 21001,
21 subd. (g).) CEQA requires that public agencies refrain from approving projects with significant
22 environmental effects if "there are feasible alternatives or mitigation measures" that can substantially
23 lessen or avoid those effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16
24 Cal.4th 105, 134; Pub. Resources Code § 21002.) Under CEQA, a "project" includes the whole of an
25 action that may result in either a direct or reasonably foreseeable indirect physical change in the
26 environment. (CEQA Guidelines, § 15378, subd. (a).) CEQA requires agencies to inform themselves
27 about the environmental effects of their proposed actions, consider all relevant information before
28 taking action, give the public an opportunity to comment, and avoid or reduce significant

1 environmental impacts when it is feasible to do so. (Pub. Resources Code, § 21000.) The agency’s act
2 or decision must be supported by substantial evidence in the light of the whole record. (CEQA, §§
3 21168, 21168.5; CEQA Guidelines, § 15384(b); *Neighbors of Cavitt Ranch v. County of Placer* (2003)
4 106 Cal.App.4th 1092, 1099-1100). “Substantial evidence” is defined as relevant, reasonable
5 information and inferences that a fair argument can be made to support a conclusion, including facts,
6 reasonable assumptions predicated upon facts, and expert opinion supported by facts. (CEQA
7 Guidelines, § 15384.) Argument, speculation, unsubstantiated opinion, inaccurate or erroneous
8 evidence of social or economic impacts, which do not contribute to or are not caused by physical
9 impacts on the environment does not constitute substantial evidence.

10 73. The 2013 and 2018 PEIRs certified by the DSC are replete with omitted facts and
11 inaccurate evidence presented in a manner that is confusing and misleading to the public. The DSC’s
12 project description, analysis of project impacts and alternatives, proposed mitigation measures, and
13 ultimate assessments are so speculative and lacking in practical analysis that the conclusions rendered
14 directly violate CEQA.

15 **Improper Piecemealing of the Delta Plan, Delta Plan Amendments, BDCP/WaterFix and**
16 **Other Reasonably Foreseeable Projects**

17 74. The term “project” is given a broad interpretation in order to maximize protection of the
18 environment. (*McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District*
19 (1988) 202 Cal.App.3d 1136, 1143.) A lead agency must not piecemeal the analysis of several projects
20 that are subsumed by one larger project, in order to ensure “that environmental considerations not
21 become submerged by chopping a large project into many little ones, each with a potential impact on
22 the environment, which cumulatively may have disastrous consequences.” (*Burbank-Glendale-*
23 *Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.)

24 **Improper Piecemealing of the Delta Plan, BDCP and Other Projects in 2013**

25 75. Substantial quantities of water are already taken out of the Sacramento River and away
26 from the Bay-Delta. Taking additional significant quantities of water out of the Sacramento River and
27 away from the Bay-Delta would have numerous adverse environmental impacts including but not
28 limited to: adversely affecting designated critical habitat for listed endangered fish species including

1 winter-run and spring-run Chinook salmon; reducing flows and degrading water quality in the lower
2 Sacramento River, sloughs, and the Bay-Delta; and cumulative adverse impacts including but not
3 limited to exacerbating increasing salinity in the Delta in conjunction with continuing exports of water,
4 rising sea levels resulting from climate change, and reduced mountain runoff resulting from climate
5 change. Other effects would include adversely impacting flows and fish as well as fish habitat all the
6 way upstream to the Shasta, Trinity, Oroville, and Folsom reservoirs.

7 76. On November 4, 2011, the DSC posted a Draft Programmatic Environmental Impact
8 Report (DPEIR) on the Draft Delta Plan. The DPEIR explained that “conveyance options are currently
9 being studied in detail by the agencies and interested parties preparing the BDCP and the related
10 EIR/EIS. A public draft of the BDCP and the related EIR/EIS is planned for release by mid-2012.”
11 (DPEIR 23-3.) The DPEIR explained that the BDCP would be required to comply with CEQA
12 including a comprehensive review and analysis of a reasonable range of flow criteria, rates of diversion,
13 identification of water remaining available for export, a reasonable range of Delta conveyance
14 alternatives including through-Delta, potential effects of climate change including possible sea level
15 rise up to 55 inches, possible changes in total precipitation and runoff patterns on the conveyance
16 alternatives and habitat restoration activities considered in the EIR, potential effects on migratory fish
17 and aquatic resources, and potential effects of each Delta conveyance alternative on Delta water
18 quality. (DPEIR 23-3, 4.)

19 77. In February 2012, the BDCP agencies released preliminary drafts of the BDCP and the
20 BDCP EIR/EIS. In April, 2012, NMFS and USFWS issued “red flag” comments (early warning signals
21 of impaired recovery) expressing serious concern over the quality of the analysis in the BDCP and the
22 potential impacts to threatened and endangered species. The USFWS’ red flag comments mentioned
23 that, in light of downward trends in covered fish species, “the document should clearly and accurately
24 lay out what is known of the foundations of each species’ population dynamics ... and discuss how
25 BDCP actions will influence these processes.”(USFWS comment 1.2). Also noted as a “red flag” was
26 the project’s proposal to extract more freshwater from the Delta: “Preliminary Project proposes to
27 extract larger volumes of freshwater from the Delta than are currently exported against a backdrop of
28 rising sea level and a re-design of the estuary landscape that will change tidal flows. Whether this can

1 be accomplished while other parts of the plan simultaneously contribute to recovery of covered species
2 is an unanswered question of central importance.” (USFWS comment 2.1).

3 78. On November 30, 2012, the DSC posted the final Draft Plan and a Recirculated Draft
4 Programmatic Environmental Impact Report (RDEIR) for public review and comment. However, the
5 DSC did not incorporate or rely on the analysis in the BDCP Draft EIR/EIS because it was not released
6 by the time the DSC released the RDEIR. In fact, the BDCP Draft EIR/EIS had still not been released
7 for public review and comment as of the date of the filing of the 2013 complaint. Consequently, the
8 DSC had adopted the Delta Plan and Regulations, and certified the 2013 PEIR even though the public
9 did not have information and analysis critical to determine the amount of water actually available for
10 export, analyze a reasonable range of Delta conveyance alternatives (including through-Delta, potential
11 cumulative effects of climate change and sea level rise), or analyze the potential effects of the Delta
12 Water Tunnels on Delta water quality, migratory fish, and aquatic resources.

13 79. The RDEIR did not analyze, discuss or respond to the “red flag” comments of the
14 NMFS and USFWS on the BDCP alleged above or to any of the other “red flag” comments made in
15 April 2012. Moreover, the RPDEIR did not even disclose the existence of the April 2012 “red flag”
16 comments that had been made by the federal fish and wildlife agencies. In failing to address the rapidly
17 progressing BDCP process, the DSC failed to analyze and disclose the impacts of a reasonably
18 foreseeable project that may have a significant effect on the environment.

19 80. The 2013 Delta Plan will streamline approval of additional projects without providing
20 any analysis of these projects as evidenced by the Plan’s own admissions:

21 a. The Revised Project encourages certain types of actions including “Conveyance
22 facilities (pipelines and pumping plants)” (RDEIR 3-11), “various actions which, if taken, could lead to
23 construction and/or operation of projects that could provide a more reliable water supply” (RDEIR 2-5)
24 and, “Surface water projects (water intakes, treatment and conveyance facilities, reservoirs,
25 hydroelectric facilities)” (RDEIR 2-5). The Findings refer throughout to encouraging “construction and
26 operation of new reliable water supply, . . . projects (Findings pp. 7, 8, 20, 21, 26, 57, 58);

27 b. “The Delta Plan defines an integrated and legally enforceable set of policies,
28 strategies, and actions that will serve as a basis for future findings of consistency by state and local

1 agencies with regard to specified ‘covered actions,’” (PEIR 2-1);

2 c. “[T]he PEIR conservatively assumes that the Delta Plan policies and
3 recommendations will encourage other agencies to take actions that may have an effect on the physical
4 environment, thus indirectly leading to significant environmental impacts in some cases.” (PEIR 3-8,9);

5 d. Future covered actions, meaning those actions that will occur in whole or in part
6 in the Delta, will be subject to review for consistency with the Delta Plan. (PEIR 3- 9);

7 e. BDCP actions must be consistent with the Delta Plan (PEIR 3-12) and inclusion
8 of the BDCP upon completion in the Delta Plan is mandatory. (DPEIR 23-1);

9 f. Delta Plan policies are mandatory. (PEIR 3-12);

10 g. The Delta Plan encourages successful completion of the BDCP by December 31,
11 2014 (Delta Plan 114) (PEIR 3-14), which has been declared by the State in June and July 2012 to be
12 the Delta Water Tunnels;

13 h. The DSC is a CEQA responsible agency for the BDCP EIR and has been
14 consulting with DWR during the development of the BDCP. (PEIR 3-15);

15 i. The Delta Plan could influence the nature of decisions and actions by other
16 agencies that may have significant effects on the physical environment by influencing or encouraging
17 other agencies to construct new facilities. (PEIR 3-24);

18 81. In spite of these multiple admissions that the 2013 Delta Plan will influence, catalyze,
19 and ensure the adoption of multiple other projects and plans, the 2013 PEIR failed to include
20 meaningful analysis of any of these plans. The DSC violated CEQA by approving the Delta Plan and
21 Regulations in May of 2013 planning for new conveyance while unlawfully segmenting (or
22 piecemealing) and postponing (or deferring), environmental disclosure and evaluation of new
23 conveyance including the true project and its environmental impacts until that would be done in the
24 future by a different agency, DWR, in the BDCP Delta Water Tunnels planning process.

25 **Improper Piecemealing of the BDCP/Water Fix Project and the Delta Plan Amendments**
26 **in 2017 and 2018**

27 82. Many details of the BDCP/Water Fix Project have already been established in the
28 December 2016 BDCP/California WaterFix EIR/S and DWR’s July 21, 2017, final approval of the

1 Project, findings and statement of overriding considerations, and filing of a Validation action seeking to
2 validate \$8.8 billion of bonds to pay for construction of the project. The water diverted would no longer
3 flow through the lower Sacramento River and the Bay-Delta. Instead, the water would be transported
4 through the Tunnels to the State Water Project (SWP) and Central Valley Project (CVP) pumping
5 plants near Tracy in Alameda County for export to the south. The capacity of the Tunnels, 15,000 cfs,
6 is about the entire average summer flow of the Sacramento River near Clarksburg. The intakes for the
7 Tunnels would be far enough upstream to take the water and thus reduce the freshwater flows in the
8 Sacramento River and Bay- Delta and also in the Elk, Georgianna, Miners, Steamboat, Sutter and other
9 sloughs.

10 83. The Delta Plan Amendments incorporate the WaterFix Tunnels Project into the Plan by
11 calling for a dual-conveyance option for the Delta including existing and new intakes and below-
12 ground conveyance of water flows from the Sacramento River to the south Delta. (App. A. Revisions to
13 Text of Proposed Delta Plan Amendments, p. 126, April 2018.) The accompanying Draft and Final
14 PEIRs, however, do not analyze the new conveyance and identify, disclose and analyze the
15 environmental impacts that would result from the Project.

16 84. The DSC has violated CEQA by approving the Delta Plan Amendments in April of
17 2018 planning for dual conveyance while not including environmental disclosure and evaluation of the
18 true project and its environmental impacts into 2017 Draft and 2018 Final PEIRs.

19 **Failure to Integrate CEQA Review of the Delta Plan Amendments with the CEQA Review**
20 **of the WaterFix Tunnels Project**

21 85. “Lead agencies in particular must take a comprehensive view in an EIR” and the policy
22 of CEQA is to conduct integrated review. (*Banning Ranch Conservancy v. City of Newport Beach*
23 (2017) 2 Cal.5th 918, 939, 942.) Pursuant to CEQA Guidelines section 15124(d)(1)(C), “to the fullest
24 extent possible, the lead agency should integrate CEQA review with these related environmental review
25 and consultation requirements.”

26 86. The 2018 PEIR violated CEQA by failing to integrate the environmental review of the
27 Delta Plan Amendments with the environmental review of the BDCP/Water Fix Project.

28 **Inadequate Project Description in 2013 Delta Plan PEIR**

1 87. Knowledge of the regional setting is critical to the assessment of environmental
2 impacts. (CEQA Guidelines, § 15125). The description of a project must contain the “precise location
3 and boundaries of the proposed project” on a detailed map, as well as a “general description of the
4 project's technical, economic, and environmental characteristics.” (CEQA Guidelines, § 15124.)
5 Pursuant to CEQA, an accurate, stable and finite project description is the *sine qua non* (absolutely
6 indispensable requirement) of an informative and legally sufficient EIR. (*County of Inyo v. City of Los*
7 *Angeles* (1977) 71 Cal.App.3d 185, 193.) “A curtailed or distorted project description may stultify the
8 objectives of the reporting process.” (*Id.* at pp. 192-193.)

9 88. Instead of doing what CEQA requires, the DSC has instead failed to provide the
10 accurate, stable and finite project description required by CEQA even though the Delta Water Tunnels
11 project was announced by both the Governor and the Resources Agency as the project during the
12 summer of 2012 months prior to the release of the RDEIR. In February 2012, the California Resources
13 Agency commenced releasing Administrative Draft chapters of the BDCP. The released chapters
14 described the Delta Water Tunnels project as set forth above, but assumed that the true analysis will be
15 conducted by the BDCP lead agencies: “This EIR assumes that the BDCP agencies and the BDCP
16 EIR/EIS agencies will complete the planning and permitting process in accordance with the published
17 schedules; and that this EIR does not include the same extensive policy, scientific, and environmental
18 analysis that is being completed for the BDCP EIR/EIS.” (Delta Plan Draft EIR, p. 23-4.)

19 89. Instead of accurately describing the true project and finding out and disclosing all that it
20 can about the environmental impacts of the true project, the PEIR deferred analysis of the BDCP, even
21 though it claimed that the only realistic “conveyance” option was the BDCP, “It is highly unlikely that
22 a non-BDCP conveyance project would be proposed as a covered action to come before the Council
23 prior to BDCP completion (in accordance with the anticipated deadline for BDCP completion) unless
24 the BDCP process is terminated prior to completion.” (Delta Plan DEIR, p. 23-4.)

25 90. Following revisions to the Project after the first draft of the EIR was circulated, the
26 DSC failed to revise the project description (other than to note that the geographic scope of the project
27 extended “upstream”) or plot the boundaries of the revised project on a map, as required by CEQA. The
28 DSC has therefore failed to provide an accurate, stable and finite project description as required by

1 CEQA.

2 **Inadequate Project Description in 2017 Draft and 2018 Final PEIR**

3 91. The DSC did not just promote a mere “dual conveyance option for the Delta.” (Draft
4 PEIR, ch. 3, Project Description, p. 3-18.) A mere “dual conveyance option” could be a relatively small
5 additional diversion. The Water Tunnels Project, which received final approval from DWR on July 21,
6 2017, three months before the Draft PEIR was issued, is not that. The Water Tunnels Project would
7 have the capacity to divert approximately the entire typical summer freshwater flow of the Sacramento
8 River at the point of diversion. The obvious intent of the DSC was to amend the Delta Plan so that
9 DWR could claim that its specific Tunnels project is consistent with the Delta Plan, whereas other
10 alternatives such as not creating a new diversion in the North Delta while finally beginning to increase
11 freshwater flows through the Delta by reducing exports, would not be consistent with the Delta Plan as
12 amended. What the DSC has done in the Draft and Final PEIR is to mislead the public that the Delta
13 Plan Amendments on conveyance are not a threat to foreclose alternatives and to drastically increase
14 the diversions and reduce freshwater flows through the already impaired Delta. The inaccurate and
15 misleading Project description violated the CEQA requirement that an EIR must have an accurate,
16 stable, and finite project description.

17 **The DSC Violated CEQA by Not Using its Best Efforts to Find Out and Disclose All That**
18 **it Reasonably Can**

19 92. Under CEQA, “an agency must use its best efforts to find out and disclose all that it
20 reasonably can.” (*Banning Branch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 938,
21 citing Guidelines § 15144.) A primary goal of CEQA is “transparency in environmental decision-
22 making.” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 136. “CEQA requires full
23 environmental disclosure.” *Communities for a Better Environment v. City of Richmond* (2010) 184
24 Cal.App.4th 70, 88.)

25 93. The 2017 Draft and 2018 Final PEIR are inadequate under CEQA because they fail to
26 make full environmental disclosure, including that the only dual conveyance project planned or
27 contemplated is the Water Fix Delta Tunnels Project that received final approval from DWR on July
28 21, 2017.

1 94. The 2017 Draft and 2018 Final PEIR are also inadequate under CEQA because of the
2 failure of the DSC to find out and disclose all that reasonably could be disclosed about the WaterFix
3 Delta Tunnels Project including all of the information contained in the 2016 BDCP/California Water
4 Fix Final EIR/S.

5 **The DSC Failed to Assume That All Phases of the Water Fix Tunnels Project Will be**
6 **Built, Will be Operated, Will Need Water, and Failed to Analyze the Impacts of Providing**
7 **Water for the Entire Proposed Project**

8 95. Under CEQA, and EIR “must assume that all phases of the project will eventually be
9 built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing
10 water to the entire proposed project. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of*
11 *Rancho Cordova* (2007) 40 Cal.4th 412, 431.) In addition, “The future water supplies identified and
12 analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic
13 allocations (“paper water”) are insufficient bases for decision-making under CEQA.” (*Vineyard Area*
14 *Citizens*, 40 Cal.4th 412, 432.)

15 96. The Delta Plan Amendments on Conveyance, Storage, and Operations of Both (CSO)
16 admit that expansion of reservoirs and dams would be required to supply water for the Project.
17 Recommendation WR R12d says,

18 Subject to completion of environmental review and approval by the lead agency, and applicable
19 regulatory approvals from other public agencies, options for new or expanded water storage are
20 hereby promoted as follows: (1) Within the Delta watershed, project proponents should design
21 and operate new or expanded offstream or onscreen surface water storage projects consistent
22 with the criteria in WR R12h . . . (App. A, Revisions to Text of Proposed Delta Plan
23 Amendments, p. 129, April 2018.)

24 97. The 2017 Draft and 2018 Final PEIRs are devoid of identification, disclosure, and
25 analysis of the impacts of providing water to the entire Project including the impacts resulting from
26 expanding reservoirs and constructing and operating new reservoirs, or even identifying the number,
27 size, and location of the new reservoirs. These omissions violate CEQA.

28 98. The 2017 Draft, and 2018 Final PEIR violated CEQA by selecting the dual-conveyance
alternative while failing to assume the entire project will eventually be built and will need water, and by
failing to analyze the impacts of providing water to the entire Project.

The Fragmented Presentation in the 2017 Draft and 2018 Final PEIR Violates CEQA and

The DSC has Never Identified, Disclosed, or Analyzed the Environmental Impacts of the WaterFix Tunnels Project in an EIR

1
2
3 99. The data and analyses supporting a decision must be in the EIR for the subject Project.
4 “Readers of an EIR should not be required to ‘ferret out an unreferenced discussion in [related material]
5 The data in an EIR must not only be sufficient in quantity, it must be presented in a manner
6 calculated to adequately inform the public and decision-makers, who may not be previously familiar
7 with the details of the project. [I]nformation scattered here and there in EIR appendices, or a report
8 buried in an appendix, is not a substitute for a good faith reasoned analysis (*Banning Ranch*
9 *Conservancy*, 2 Cal.5th 918, 941.)

10 100. The 2013 Delta Plan EIR did not evaluate the potential environmental consequences of
11 conveyance options. The Final EIR on the Delta Plan stated:

12 the proposed Delta Plan does *not* make any recommendations regarding conveyance at
13 this time because the Council has determined that the BDCP agencies are in the best
14 position to complete the planning process, including defining acceptable ranges of exports
15 and through-Delta flows. Accordingly, the PEIR does not evaluate the potential
16 environmental consequences of various BDCP options that DWR may be considering.
(May 2013 PEIR, p. 3-15.)

17 101. Neither the DSC 2017 Draft nor 2018 Final PEIR evaluated the environmental impacts
18 of the WaterFix Tunnels Project. The 2018 Final PEIR stated:

19 Specifically, California WaterFix was used as an example of new, large-scale conveyance
20 through the Delta in the Draft PEIR because it provides information useful to the program-
21 level analysis concerning the types and magnitude of impacts that might be expected from
22 construction and implementation of this type of conveyance project ... Analyses of
23 physical impacts of the project as it was described at the time the California WaterFix
24 Final EIR/EIS was certified, ... support the conclusions in this Draft PEIR, regardless of
25 the final configuration of the California WaterFix project if and when it is approved and
26 proceeds to construction. (Final PEIR p. 3-25.)

27 102. Neither the DSC 2017 Draft nor 2018 Final PEIR contained substantial evidence
28 supporting the conclusions in the PEIR. The 2018 Final PEIR stated:

The Final EIR/EIS for the BDCP/California WaterFix Project (DWR and Reclamation
2016a) describes the impacts associated with the California WaterFix, which is
Alternative 4A, and which consists of construction and operation of a new river intake,
large-diameter tunnels, and other related improvements to convey Sacramento River water
to south Delta export facilities. This information is useful to the program-level analysis in
this Draft PEIR regarding the types and magnitude of impacts that might be expected due

1 to the construction and operation of new-large-scale conveyance in the Delta and
2 constitutes substantial evidence supporting the conclusions in this PEIR. (Final PEIR p. 3-
9)

3 103. The information necessary to try to understand the dual conveyance option and what
4 the impacts of the Project would be was not even buried somewhere in the DSC's Draft or Final PEIR.
5 The information claimed to be sufficient by the DSC is instead buried somewhere in the 80,000 or so
6 pages of the December 2016 BDCP/WaterFix EIR/S. This omission of information from the DSC PEIR
7 and fragmented presentation violated CEQA.

8 **The Failure to Squarely Address the Subjects Set Out in the Court Order Violated CEQA**
9 **as Well as the Court Order**

10 104. Only in the 2018 Final PEIR did the DSC finally disclose that the Court determined the
11 Delta Plan to be invalid, and required the Plan to be revised to include quantified or otherwise
12 measurable targets associated with achieving reduced Delta reliance and the other subjects addressed by
13 the Court Order.

14 105. This failure to squarely address the Court Order in the 2017 Draft PEIR, violated
15 CEQA. In *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, the
16 court explained, "Rather than squarely addressing the subjects that were set out in the court's order and
17 submitting their environmental conclusions to public scrutiny, appellants [the State agency] chose to
18 circulate a document that simply swept the serious criticisms of this project under the rug." A Draft
19 environmental impact document must be adequate because only at the stage when it "is circulated can
20 the public and outside agencies have the opportunity to analyze a proposal and submit comment."
21 (*Mountain Lion Coalition*, 214 Cal.App.3d 1043, 1052.) Instead of complying with CEQA, the 2017
22 Draft PEIR "drew a red herring across the path of public input" in violation of CEQA.

23 **Inadequate Statement of Project Objectives**

24 106. CEQA Guidelines section 15124(b) requires an EIR to contain a statement of objectives
25 sought by the proposed project to help develop a reasonable range of alternatives for evaluation and aid
26 decision makers in preparing findings or a statement of overriding considerations. When project
27 objectives are incorrectly described, there is a substantial risk that potentially feasible alternatives and
28 mitigations that would reduce or eliminate significant environmental impacts will not be considered.

1 (See *Habitat and Watershed Caretakers v. City of Santa Cruz* (2012) 213 Cal.App.4th 1277. CEQA
2 further requires a statement briefly describing the intended uses of the EIR. (CEQA Guidelines, §
3 15124(d).)

4 107. The 2013 PEIR Project Description and Project Objectives violated CEQA guideline
5 15124 in that it neglected the statutory requirements of Water Code section 85054 (that the “coequal
6 goals be achieved in a manner that protects and enhances the unique cultural, recreational, natural
7 resource, and agricultural values of the Delta as an evolving place”), thereby impacting the
8 consideration of projects under the BDCP, as well as project alternatives that could more properly
9 protect and enhance the value of the Delta.

10 108. Additionally, the 2013 PEIR fails to include a comprehensive statement of intended
11 uses of the document, leaving it vulnerable to misuse in the future. (CEQA Guidelines, § 15124, subd.
12 (d).) These deficiencies directly violate CEQA.

13 109. The 2018 PEIR claimed an objective of new or improved Delta conveyance
14 infrastructure to increase the reliability of water available for export supplies. (Draft PEIR at ES-5;
15 2018 Findings at 107.) The objective included “The ability to export larger amounts of water in wet
16 years. (App. A, Revisions to Text of Proposed Delta Plan Amendments, p. 126, April 2018.) This
17 improper objective aided the DSC in unlawfully dismissing from consideration or rejecting alternatives
18 that would achieve Delta Reform Act goals such as reducing reliance on the Delta and restoring Delta
19 water flows and water quality. The DSC violated CEQA by creating objectives counter to the Delta
20 Reform Act goals and CEQA’s requirement to develop and consider a range of reasonable alternatives.

21 **Failure to Analyze a Reasonable Range of Alternatives**

22 110. An EIR must describe a reasonable range of alternatives to the project, or the location
23 of the project, that could feasibly attain most of the basic objectives of the project while avoiding or
24 substantially lessening any of the significant effects of the project. (CEQA Guidelines, § 15126.6, subd.
25 (a) and (f).) An EIR must contain a “quantitative, comparative analysis” of the relative environmental
26 impacts of project alternatives. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d
27 692, 730-737.) CEQA requires that public agencies refrain from approving projects with significant
28 environmental effects if “there are feasible alternatives or mitigation measures” that can substantially

1 lessen or avoid those effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16
2 Cal.4th 105, 134; Pub. Resources Code § 21002.) When a project would have significant adverse
3 environmental effects, agencies are “required to consider project alternatives that might eliminate or
4 reduce the project’s significant adverse environmental effects.” (*Friends of the Eel River v. Sonoma*
5 *County Water Agency* (2003) 108 Cal.App.4th 859, 873). “Evaluation of project alternatives and
6 mitigation measures is ‘the core of an EIR.’” (*Banning Ranch Conservancy v. City of Newport Beach*
7 (2017) 2 Cal.5th 918, 937.)

8 111. The DSC has never, in either 2013 or 2017 and 2018, developed and considered a
9 reasonable range of alternatives to the Project, including alternatives that would increase freshwater
10 flows through the Delta by reducing exports thereby reducing reliance on the Delta, and restoring the
11 Delta. That failure violated CEQA’s requirement to consider a reasonable range of alternatives to the
12 project.

13 **CEQA 2013 Alternatives Violations**

14 108. The Environmental Water Caucus (EWC), a coalition (including Petitioners) that calls
15 for water conservation measures and a reduction in water exports, proposed an alternative to the Delta
16 Tunnels project identified as Alternative 2 in the PEIR. This alternative was not only feasible, but it did
17 not require the construction of a new conveyance system. The DSC selected the Revised Project over
18 Alternative 2, although it admitted that, with respect to water resources, “Alternative 2 would have less
19 water quality impacts than the Revised Project, because it involves fewer facilities and less diversions
20 of water from the Delta and Delta watershed.” (RDEIR 25-6). After noting that the “[b]iological
21 resources in the Delta have been in decline for many years...[and that] decline is expected to continue,”
22 the RDEIR found that “Alternative 2 contributes more to improving conditions for biological resources
23 and arresting ecosystem decline than the Revised Project.” Although the DSC admitted that Alternative
24 2 would avoid or substantially lessen many of the significant impacts that would occur from
25 implementation of the Delta Plan, the DSC rejected Alternative 2.

26 112. The DSC refused to consider variants on Alternative 2 suggested by FOR on January
27 11, 2013, including Alternative 2A to not encourage or recommend new or improved conveyance,
28 water intakes, conveyance facilities, or exporting more water in the wet years until the determination of

1 such fundamental issues as water supply availability and the environmental impacts of supplying the
2 water and performance of public trust doctrine analysis, and Alternative 2B to not recommend new
3 conveyance prior to a robust CEQA, water supply and public trust doctrine analysis but not reducing
4 exports to the degree proposed by Alternative 2 and/or phasing in reductions in exports over time by
5 phasing out exports to impaired agricultural lands that will or should eventually cease production. The
6 DSC dismissed consideration of proposed Alternatives 2A and 2B, stating “The Delta Plan does not
7 include a Delta conveyance facility of the type described in the comment, and thus the EIR neither
8 analyzes the impacts of such a facility nor considers alternatives to one.” (Response to comment
9 ROR010-3). The DSC rejected Alternative 2 as being “slightly environmentally inferior” to the Revised
10 Project based on the severity of the proposed export reductions.

11 113. The DPEIR, RDEIR, and PEIR did not evaluate the potential environmental
12 consequences of the alternatives including the Delta Water Tunnels that the State has announced as the
13 BDCP project or an alternative under consideration (PEIR 3-15, 27) and did not evaluate the severity
14 and extent of project-specific impacts on the physical environment. (Final Response to comment
15 OR102-7; RDEIR 2-26).

16 114. The refusal by the DSC to even consider variants on Alternative 2 including not
17 developing new upstream conveyance and export reductions to a lesser extent than Alternative 2
18 constituted failure to develop and consider a reasonable range of alternatives and also constituted an
19 unlawful effort to evade consideration of an alternative that would be undeniably environmentally
20 superior to the Revised Project.

21 **2017 and 2018 PEIR CEQA Alternatives Violations**

22 115. The DSC adopted the “California Environmental Quality Act Findings and Statement
23 of Overriding Considerations for the Delta Plan Amendments” on April 26, 2018. The Findings
24 determined that the Project would have about 65 significant and unavoidable adverse impacts
25 associated with the approval of the Delta Plan Amendments that could not be reduced to a less-than-
26 significant level by implementation of mitigation measures. Some of the DSC determined significant
27 and unavoidable adverse impacts include substantial degradation of visual qualities (Impact 5.2.1),
28 adversely impact habitat associated with special-status fish species (5. 5-1), adverse direct effects on

1 special-status fish species (5. 5-2), interference with movement of native resident fish species (5. 5-3),
2 adverse impacts on wetlands and riparian habitat (5. 6-1), release of pollutants into surface and/or
3 groundwater that could violate water quality standards (5. 11-1), substantial depletion of groundwater
4 supplies or substantial interference with groundwater recharge (5. 11-2), substantial change in water
5 supply availability to users of Delta water (5. 11-3), substantial increase in the rate or amount of surface
6 runoff that could result in flooding on or off site (5. 11-4), exposure of people to a significant risk of
7 loss, injury, or death involving flooding (5. 11-5), increased risk of inundation by sieche, tsunami or
8 mudflow (5. 11-6), climate change including sea-level rise could conflict with the operation of projects
9 (5. 11-7), and impairment, degradation, or elimination of recreational resources, facilities, and
10 opportunities (5. 15-1.)

11
12 116. The Findings also determined that the Project would have about 17 significant and
13 unavoidable adverse cumulative impacts. The Findings explain that “An EIR is required to discuss the
14 cumulative impacts of a project when the project’s incremental effect is cumulatively considerable.
15 (CEQA Guidelines §15130(a)(1).) Some of the DSC determined adverse significant and unavoidable
16 cumulative impacts include aesthetics, aquatic biological resources including “the substantial
17 degradation or elimination of special-status fish species and their habitat and the movement of native
18 resident fish species”, hydrology and water quality, and recreation.

19 117. The 2017 Draft and 2018 Final PEIR alternatives analyses were shams. Instead of
20 comparing alternatives to the true Project, the Water Fix Tunnels given final approval by DWR on July
21 21, 2017, alternatives were compared to a vague, undefined “dual-conveyance Option” including
22 “existing and new intakes” and “below-ground conveyance.” There was no “quantified, comparative
23 analysis” of the “alternatives” in violation of CEQA. Since as shown above, analyses of physical
24 impacts of the project and claimed substantial evidence supporting the conclusions in the 2018 PEIR
25 were not even in the 2018 PEIR, there was no lawful basis under CEQA by which to rationally
26 compare the impacts of the selected Project with alternatives and rationally determine which alternative
27 to adopt. Instead of conducting a balanced alternatives analysis, the DSC unlawfully privileged water
28 exports over protection of Delta water quality, freshwater flows, public trust values and Endangered

1 Species Act values. The DSC did the plumbing before doing the analysis and the planning.

2 118. Petitioners and others have provided DSC with reasonable alternatives such as *A*
3 *Sustainable Water Plan for California* (Environmental Water Caucus, May 2015) that would increase
4 freshwater flows through the Delta by reducing exports, but these less impactful alternatives have been
5 ignored by the DSC. None of the four alternatives to the Project discussed in the April 26, 2018
6 Findings (pp. 105-112) would reduce exports to increase freshwater flows through the Delta to reduce
7 reliance on the Delta and restore the Delta. The failure to include such alternatives violated CEQA. The
8 Findings determined that “Alternative 2: Delta Wetland Restoration Emphasis” “is the environmentally
9 superior alternative” (Findings p. 112), but the alternative was rejected.

10 119. Pursuant to the Delta Reform Act, the task was to determine the operational
11 requirements and flows necessary for recovering the Delta ecosystem and restoring fisheries under a
12 reasonable range of hydrologic conditions, which will identify the remaining water available for export
13 and other beneficial uses. (Wat. Code § 85320(b)(2)(A).) Then, there was to be developed “A
14 reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and
15 isolated conveyance alternatives” (Wat. Code § 85320(b)(2)(B).) The DSC did not make the
16 required determinations so that its selection of a dual-conveyance option was premature and violated
17 CEQA.

18 120. The findings determining that the Project would have about 65 significant and
19 unavoidable adverse environmental impacts and 17 significant and unavoidable make the CEQA
20 alternatives analyses violations flagrant. The DSC has skewed the alternatives preparation and
21 consideration to attempt to carry out a very damaging water project.

22 **Inadequate Analysis of the “No Project” Alternative**

23 121. The 2013 and 2018 PEIR failed to describe or rationalize which current plans are
24 incorporated into the Delta Plan’s No Project Alternative. The PEIRs also failed to provide
25 quantification of water supplies, water quality performance, percentage of fish or wildlife restoration
26 goals met to date, or other resource areas, therefore frustrating its inability to actually compare the other
27 alternatives to the No Project Alternative.
28

1 122. CEQA requires that an EIR compare its proposed project with the conditions that
2 would likely occur if the project would not occur (the “No Project Alternative”). The No Project
3 Alternative allows the agency “to compare the impacts of approving the proposed project with the
4 impacts of not approving the proposed project.” (CEQA Guidelines, § 15126.6, subd. (e)(1).) “The ‘no
5 project’ analysis shall discuss the existing conditions at the time the notice of preparation is published
6 ... as well as what would be reasonably expected to occur in the foreseeable future if the project were
7 not approved, based on current plans and consistent with available infrastructure and community
8 services.” (CEQA Guidelines, § 15126.6, subd. (e)(2).) When the project is the revision of an existing
9 land use or regulatory plan, policy or ongoing operation, the “no project” alternative will be the
10 continuation of the existing plan, policy or operation into the future. (CEQA Guidelines, § 15125 subd.
11 (a).)

12 123. The PEIRs failed to describe or rationalize which current plans are incorporated into the
13 Delta Plan’s No Project Alternative. The PEIRs also failed to provide quantification of water supplies,
14 water quality performance, percentage of fish or wildlife restoration goals met to date, or other resource
15 areas, therefore frustrating its inability to actually compare the other alternatives to the No Project
16 Alternative.

17 **Improper Environmental Baseline**

18 124. CEQA Guidelines section 15125 subd. (a) requires an EIR to include a description of
19 the physical environmental conditions in the vicinity of the project, which ordinarily serves as the
20 baseline by which the agency determines whether an impact is significant. The EIR must disclose the
21 environmental setting such that project impacts and alternatives can be appropriately analyzed. The
22 2013 and 2018 PEIRs failed to adequately describe the environmental baseline of the intended project,
23 in that the PEIRs fail to adequately disclose the overextended entitlements of water coming from the
24 Delta, thereby undermining the fair disclosure component of CEQA and obscuring numerous Delta
25 vulnerabilities and dangers, which affect the analysis of the Project and its environmental impacts. The
26 failure to establish a valid baseline undermines the entire impacts analysis of the PEIRs. (CEQA
27 Guidelines, § 15125, subd. (c).)

28 **Failure to Analyze Project Impacts**

1 125. An EIR must provide sufficient environmental analysis such that decision-makers can
2 intelligently consider environmental consequences when acting on proposed projects.

3 126. CEQA requires that EIRs identify a project’s significant effects on the environment,
4 identify alternatives, and indicate the manner in which those effects can be mitigated or avoided. (Pub.
5 Resource Code § 21002.1.)

6 127. The CEQA Guidelines require “direct and indirect significant effects of the project on
7 the environment” to be “clearly identified and described, giving due consideration to both the short-
8 term and long-term effects. . . [including the] [s]ignificant irreversible environmental changes which
9 would be caused by the proposed project should it be implemented.” (CEQA Guidelines, § 15126.2,
10 subd. (a) and (c).)

11 128. The Delta Plan Amendments would culminate in massive and myriad adverse physical
12 changes to the environment, including water quality and quantity in the Delta, Sacramento River, and
13 area sloughs, and including further degradation of critical habitat for endangered fish species, and
14 resulting in undisclosed impacts from expansion of reservoirs and construction and operation of new
15 reservoirs.

16 129. The DSC has admitted in the 2013 PEIR and Findings without providing any details
17 about what the impacts are or how severe they might be that the Revised Project would have significant
18 and unavoidable environmental impacts including:

19 a. “violation of water quality standards or waste discharge requirements or
20 substantially degrade water quality” (RDEIR 24-10)(Findings, p. 58);

21 b. “substantial adverse effects on sensitive natural communities, including
22 wetlands; substantial adverse effects on special-status species; substantial adverse effects on fish or
23 wildlife species habitat; interfere substantially with the movement of any native resident or migratory
24 fish or wildlife species or with established natural resident or migratory wildlife corridors” (RDEIR 24-
25 10; Findings pp. 7, 8, 26);

26 c. “operations of new water supply facilities. . . such as pipelines, tunnels, canals,
27 pumping plants, water intakes or diversions, may create long-term changes in local mixtures of source
28 waters within water bodies” (RDEIR 3-3);

1 d. operation of facilities within the rivers and streams upstream of the Delta could
2 result in changes in salinity in the Delta by reducing Delta freshwater inflows (RDEIR 3-13);

3 e. changes in instream flow and water quality conditions created by operation of the
4 projects could constitute considerable contribution to the significant cumulative impact on fish and
5 wildlife species and habitat (RDEIR 22-3; Findings p. 77);

6 f. project operations causing conflicts due to climate change and sea level rise
7 (Findings p. 57);

8 g. substantial degradation of visual qualities and adverse effects on scenic vistas
9 and resources (Findings pp. 20-21).

10 130. The DSC has admitted in the 2018 PEIR and Findings without providing any details
11 about what the impacts are or how severe they might be that the Project would have many significant
12 and unavoidable environmental impacts as alleged above in the Alternatives violations allegations.

13 131. As alleged above, no details are provided about what the actual impacts of the Project
14 would be or how severe they would be in the 2018 PEIR. Readers of the 2017 Draft PEIR were left
15 with nothing to review. Readers of the 2018 Final PEIR were given a brief reference to the 80,000 page
16 December 2016 BDCP/WaterFix EIR/S issued by DWR and Reclamation. This failure to include
17 details about Project impacts in the DSC's PEIR violated CEQA.

18 **Failure to Conduct Adequate Investigation and Consultation**

19 132. CEQA Guidelines section 15125 requires that an EIR demonstrate that the significant
20 environmental impacts of the proposed project were adequately investigated and discussed such that
21 significant effects of the project are considered in the full environmental context. The 2013 and 2018
22 PEIRs failed to adequately investigate and disclose numerous, relevant environmental facts that bear
23 directly on the potential and likely impacts of the proposed project.

24 **Failure to Properly Analyze Significant Effects**

25 133. CEQA requires EIRs to focus on the significant effects of the project on the
26 environment. (CEQA Guidelines § 15143.) The significant effects should be discussed with emphasis
27 in proportion to their severity and probability of occurrence. The 2013 and 2018 PEIRs noted that
28 certain impacts may be "Less Than Significant" or "Significant" without any substantial evidence or

1 science to support such a conclusion.

2 **Failure to Properly Analyze Cumulative Impacts**

3 134. CEQA defines “cumulative impacts” as “two or more individual effects which, when
4 considered together, are considerable or which compound or increase other environmental impacts.”
5 (CEQA Guidelines, § 15355.) The cumulative impact from several projects is the change in the
6 environment which results from the incremental impact of the project “when added to other closely
7 related past, present, and reasonably foreseeable probable future projects.” (CEQA Guidelines §
8 15355(b).)

9 135. The discussion of cumulative impacts in an EIR is required to reflect “the severity of
10 the impacts and their likelihood of occurrence.” (CEQA Guidelines § 15130(b).) Required contents
11 include either a list of past, present, and probable future projects producing related or cumulative
12 impacts, or a summary of projections that describe and evaluate the conditions contributing to the
13 cumulative effect. (CEQA Guidelines § 15130(b)(A), (B).)

14 136. The 2013 and 2018 PREIRs failed to take into account the environmental impacts of
15 diverting substantial freshwater flows from the North Delta, whether existing and future water supplies
16 and minimum stream flow requirements can be satisfied, and the impacts of expanding and/or
17 developing new upstream storage projects to provide the necessary water for the Project. With the
18 North Coast rivers including the Eel, Klamath and Trinity Rivers, being protected wild and scenic
19 rivers, climate change reducing runoff, and sea level rise, the PEIRs have failed to determine in the
20 alternatives comparisons whether there would be available water so that the Project would even be a
21 feasible, let alone preferable, alternative. Consequently, neither the public or the decision-makers have
22 before them basic, foundational information on which to enable one to evaluate the cumulative impacts
23 of this Project together with other related projects.

24 137. Pursuant to Guidelines section 15130(b)(1)(A), CEQA requires an agency to assess the
25 changing environment resulting from the incremental impacts of the project “when added to other
26 closely related past, present, and reasonably foreseeable probable future projects.” “The Agency must
27 interpret this requirement in such a way as to ‘afford the fullest possible protection of the
28 environment.’” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859,

1 868.)

2 138. The 2013 and 2018 PEIRs fail to disclose and reasonably consider the large number of
3 potential effects on California water resources due to global warming. While the 2013 PEIR references
4 some uncertainty regarding the effects of global warming, responsible planning requires consultation
5 with experts to gather information and reduce uncertainties. The “harms associated with climate change
6 are serious and well recognized.” (*Massachusetts v. Environmental Protection Agency* (2007) 549 U.S.
7 497, 521.)

8 139. In 2006, the California Legislature passed Assembly Bill 32, which states that “[g]lobal
9 warming poses a serious threat to the economic well-being, public health, natural resources, and the
10 environment of California,” including a “reduction in the quality and supply of water to the state from
11 the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses
12 and residences, damage to marine ecosystems and the natural environment, and an increase in the
13 incidences of infectious diseases, asthma, and other human health-related problems.” (Health & Safety
14 Code, § 38501(a).) The Legislature went on to list multiple uses of water it expects to be reduced or
15 threatened by global warming, including the quality and supply of water from Sierra snowpack,
16 hydropower generation, the protection of recreational uses, fisheries, marine life, and public health.
17 (Health & Safety Code, § 38501(b).)

18 140. In addition to the Legislature’s recognition of the perils of climate change, several
19 studies sponsored by the California Climate Change Center have been published that directly address
20 the effects of climate change on California hydrology in the future. And while an agency is not
21 expected to foresee the unforeseeable, it is expected to use its “best efforts to find out and disclose all
22 that it reasonably can.” (CEQA Guidelines, § 15144; see also *City of Richmond*, 184 Cal.App.4th at p.
23 96; *Vineyard*, 40 Cal.4th at p. 428.) Yet, despite the recognition of climate change by the Legislature,
24 the courts, and other organizations, climate change goes virtually unmentioned in the PEIRs
25 discussions of the Delta Plan CSO Amendments.

26 141. The PEIRs failed to perform cumulative impact analysis of how revised and related
27 projects would affect water availability, environmental conditions, and fisheries throughout the
28 Sacramento River and San Joaquin River watersheds upstream from the Delta now and in the future.

1 These climate change projections need to be an essential part of cumulative impact evaluation of the
2 Delta Plan Amendments, together with other diversions and with actions to maintain sufficient flows to
3 protect the Delta as well as upstream waters under the public trust doctrine.

4 142. The failure of the PEIRs to disclose and analyze potential climate change effects on the
5 Delta hydrology makes it impossible for the public and the decision-makers to evaluate the alternatives,
6 the mitigations, and the true nature of the environmental impacts of the Delta Plan Amendments, all of
7 which are violations of CEQA's full disclosure requirements.

8 **Inadequate Mitigation Measures**

9 143. CEQA requires that a project's environmental impacts be mitigated or avoided
10 whenever it is feasible to do so. (Pub. Resource Code § 21002.1(b)). CEQA further requires that lead
11 agencies describe the impacts that will result from the mitigation measures themselves. (CEQA
12 Guidelines, § 15126.4, subd. (a)(1)(D).)

13 144. CEQA Guidelines section 15126.4 states that "[w]here several measures are available
14 to mitigate an impact, each should be discussed and the basis for selecting a particular measure should
15 be identified. Formulation of mitigation measures should not be deferred until some future time."
16 However, measures may "specify performance standards which would mitigate the significant effect of
17 the project and which may be accomplished in more than one specified way." (CEQA Guidelines, §
18 15126.4). Performance standards are particularly appropriate in first tier approvals or other planning
19 decisions that will necessarily be followed by additional, project-level environmental review. (Remy, et
20 al., *Guide to the California Environmental Quality Act* (11th Ed. 2007), p. 552, internal citation
21 omitted.)

22 145. Lead agencies must analyze not only the impacts of their proposed projects, but also of
23 their proposed mitigation measures if such measures may have a significant effect on the environment.
24 (CEQA Guidelines, § 15126.4; *Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors*
25 (2001) 87 Cal.App.4th 99.) Mitigation measures must be directly connected to an impact. Assigning
26 mitigation measures to a group of impacts defeats the intention of demonstrating whether the measures
27 will actually mitigate the impacts. The mitigation measures discussed in the 2013 and 2018 PEIRs are
28 general, rather than specific mitigation measures, making it impossible to determine if they will be able

1 to effectively mitigate any impacts of the project. This approach violates CEQA, as there can be no
2 assurance that such mitigation measures are either available or adequate. (See *Kings County Farm*
3 *Bureau v. City of Hanford* (5th Dist. 1990) 221 Cal.App.3d 692.) “Given that there was no analysis done
4 on whether the option to build a water system is a feasible mitigation measure, we conclude that the
5 portion of the EIR addressing water concerns should have been recirculated.” (*Gray v. County of*
6 *Madera* (2008) 167 Cal.App.4th 1099, 1120.)

7 **Failure to Adequately Respond to Comments**

8 146. The DSC failed to adequately respond to comments submitted by the public and
9 governmental agencies during review of the 2018 PEIR. CEQA, Public Resources Code section 21091,
10 and Guidelines section 15088 require reasoned, good faith, detailed responses to comments. The 2018
11 PEIR responses to comments are simply conclusory statements unsupported by factual information and
12 thus violate CEQA.

13 **Improper Use of a Programmatic EIR**

14 147. Using a programmatic EIR affords a lead agency no cover for a CEQA document that
15 “does not provide decision-makers, and the public, with the information about the project required by
16 CEQA.” (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th
17 892, 916.) A program EIR cannot rationalize vague or evasive analysis. The CEQA guidelines’ list of
18 “advantages” to preparing a program EIR include a “more exhaustive” examination of effects and
19 alternatives, “full consideration” of cumulative impacts, and allowance for analysis of “broad policy
20 alternatives and program wide mitigation measures” at a time when the lead agency has the best
21 opportunity to address them properly. (Guidelines, § 15168(b).)

22 148. The DSC misrepresented the 2017 Draft and 2018 Final EIR to be a Program EIR. A
23 Program EIR would be done at the beginning to evaluate broad policy alternatives for the purpose of
24 establishing criteria for future project-level decisions. The PEIR on the Delta Plan CSO Amendments
25 was simply a post hoc rationalization to support the July 21, 2017 DWR final approval of the WaterFix
26 Tunnels Project, in violation of CEQA.

27 **Findings Not Supported by Substantial Evidence in the Record**

1 149. Guidelines section 15091 prohibits public agencies from approving a project for which
2 an EIR has been certified which identifies one or more significant environmental effects unless the
3 agency makes one or more findings for each of those effects that (1) changes are made in the project
4 which avoid or substantially lessen the effect, (2) such changes are within the jurisdiction of another
5 public agency and have been adopted by the agency or should be adopted by such other agency, or (3)
6 “Specific economic, legal, social, technological, or other considerations, including provision of
7 employment opportunities for highly trained workers, make infeasible the mitigation measures or
8 project alternatives identified in the final EIR.”

9 150. Guidelines section 15091(b) requires that “The findings required by subdivision (a)
10 shall be supported by substantial evidence in the record.” Guidelines section 15093(b) requires that
11 “The statement of overriding considerations shall be supported by substantial evidence in the record.”
12 The April 26, 2018 Findings made by the DSC were not supported by substantial evidence in the
13 record. As alleged above, instead of including substantial evidence in the 2018 PEIR, a general
14 reference was simply made to the December 2016 BDCP/Water Fix EIR/S. Consequently, the Findings
15 made by the DSC including the Statement of Overriding Considerations are not supported by
16 substantial evidence in the record and consequently violate CEQA.

17 **Preparation and Circulation of a New Draft EIR for Public Review and Comment is**
18 **Required**

19 151. Preparation of a new Draft EIR and Recirculation is required when the failure to
20 address critical issues deprives the public of meaningful participation. (*Vineyard Area Citizens for*
21 *Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449.) “Especially given the
22 sensitivity and listed status of the resident salmon species, the County’s failure to address loss of
23 Cosumnes River stream flows in the Draft EIR deprived the public ... of meaningful participation
24 [citation and internal quotations omitted] in the CEQA discussion.” (*Id.*) A draft environmental impact
25 document must be adequate because only at the stage when it “is circulated can the public and outside
26 agencies have the opportunity to analyze a proposal and submit comment.” (*Mountain Lion Coalition v.*
27 *Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051.)

28 152. The 2017 Draft and 2018 Final PEIR failed to disclose to the public that the U.S.

1 Environmental Protection Agency (EPA) had reviewed the DWR and Reclamation Recirculated Draft
2 EIR/Supplemental Draft EIS (RDEIR/SDEIS) on the Tunnels Project as required by Section 309 of the
3 Clean Air Act. The EPA gave the environmental document its failing grade of “3 (Inadequate)” in its
4 October 30, 2015 letter. Neither the DSC nor other public agency has prepared a Draft or Final EIR
5 correcting the deficiencies determined by the EPA.

6 153. The deficiencies set forth in this Petition with respect to the 2013 and 2017 “Draft PEIR
7 were so profound individually as well as collectively that the public was deprived of meaningful
8 participation in the CEQA discussion. Preparation and circulation for public review and comment of a
9 new Draft EIR is required by both case law and by Guidelines section 15088.5(a)(4) because “The draft
10 EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public
11 review and comment were precluded.”

12 154. Preparation and circulation for public review and comment of a new Draft EIR is also
13 required by Guidelines section 15088.5(a)(3) because “A feasible project alternative or mitigation
14 measure considerably different from others previously analyzed would clearly lessen the significant
15 environmental impacts of the project, but the project’s proponents decline to adopt it.”

16 155. In October 2017, the State Water Resources Control Board found that “it is widely
17 recognized that the Bay-Delta ecosystem is in a state of crisis.” (Final Scientific Basis Report in
18 Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries
19 and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows, at
20 1-4). The water management infrastructure, including the Central Valley Project (CVP) and State Water
21 Project (SWP)

22 have been accompanied by significant declines in nearly all species of native fish, as well as
23 other native and non-native species dependent on the aquatic ecosystem. Fish species have
24 continued to experience precipitous declines since last major update and implementation of the
25 Bay-Delta Plan in 1995 that was intended to halt and reverse the aquatic species declines
26 occurring at that time. In the early 2000s, scientists noted a steep and lasting decline in
27 population abundance of several native estuarine fish species that has continued and worsened
28 during the recent drought. Simultaneously, natural production of all runs of Central Valley
salmon and steelhead remains near all-time low levels. (*Id.*)

According to the Water Board, the best available science indicates that existing “requirements are
insufficient to protect fish and wildlife.” (*Id.* at 1 – 5.)

1 156. Preparation and circulation for public review and comment of a new Draft EIR is also
2 required by Guidelines sections 15088.5(a)(1) and (2) because a new significant environmental impact
3 and a substantial increase in the severity of an environmental impact would result from the Project. The
4 worsening crisis in the Delta was brought to the attention of the DSC by way of comments on the 2017
5 Draft PEIR but the worsening crisis was ignored by the DSC in the 2018 PEIR. Instead of doing
6 analysis of the worsening crisis in the Delta, the DSC simply adopted recommendation WR R12i,
7 calling upon the SWRCB to “Update the Bay-Delta Plan and Consider Draught.” (App. A, Revisions to
8 Text of Proposed Delta Plan Amendments, p. 133, April 2018.)
9

10 157. Additional violations of CEQA carried out by the DSC CEQA process in 2017 and
11 2018 include that the DSC:

- 12 1. Failed to evaluate the impact on the environment of all phases of the Project which
13 include “planning, acquisition, development, and operation” pursuant to CEQA
14 Guidelines section 15126;
- 15 2. Failed to provide quantification including but not limited to failing to provide a
16 consistent and coherent description of the future demand for new water and the amount
17 of surface water potentially available from the Delta and Delta watershed to meet that
18 demand;
- 19 3. Failed to analyze the environmental impacts of supplying the quantities of water for
20 export through new, upstream conveyance;
- 21 4. Failed to address or even disclose in the PEIR that the only benefit cost analysis of new
22 conveyance to date has demonstrated that costs would greatly exceed benefits so that the
23 new conveyance would not make economic or financial sense and be a feasible
24 alternative;
- 25 5. Failed to perform or await performance of environmental, public trust doctrine and cost
26 benefit analysis to inform the planning decisions made in the Delta Plan and Regulations
27 and the environmental review pursuant to CEQA thereof;
- 28 6. Failed to adopt adequate findings supported by substantial evidence that alternatives to
 the Project that would have avoided or lessened the significant impacts of the project

1 were infeasible and failed to disclose the readily available mitigation measures and
2 alternatives that would meet the basic project objectives;

- 3 7. Failed to properly determine that economic, legal, social, technological, or other benefits
4 of the program were overriding considerations that permitted approval despite
5 significant impacts on the environment.

6 158. Without an understanding of the effects and alternatives of the Project, a full
7 consideration of cumulative impacts, and an analysis of the types of projects that will follow, the 2018
8 PEIR cannot possibly contain substantial evidence to support its conclusions (CEQA Guidelines, §
9 15384), thus failing to uphold the requirements of CEQA. (See *Planning and Conservation League v.*
10 *Department of Water Resources* (2000) 83 Cal.App.4th 892, 916) (CEQA not satisfied if document
11 fails to provide decision-makers and the public with the required information about the project.)

12 159. As a result of the foregoing defects, the DSC prejudicially abused its discretion by
13 certifying the 2013 and 2018 PEIRs that do not comply with CEQA and by approving the Delta Plan
14 Amendments. The DSC failed to proceed in the manner required by law. Accordingly, the DSC's
15 certification of the PEIRs and approval of the Delta Plan Amendments must be set aside.

16 **VIII. THIRD CAUSE OF ACTION**

17 **DECLARATORY RELIEF**

18
19 160. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully
20 set forth herein.

21 161. Petitioners contend that the 2013 Delta Plan and 2018 Delta Plan Amendments, and
22 selected project alternative have been adopted in violation of CEQA because the DSC failed to proceed
23 in the manner required by CEQA including the failures to adequately identify, disclose, and evaluate
24 the environmental impacts including but not limited to impacts on water quality, freshwater flows, and
25 endangered fish species resulting from new upstream conveyance including the Delta Water Tunnels,
26 along with the additional violations of CEQA alleged above. Petitioners contend that the Delta Plan
27 Amendments foreclose equal consideration of alternatives that would increase freshwater flows through
28 the Delta by reducing exports and that would not add new conveyance facilities such as the intakes and

1 Delta Water Tunnels, by making such alternatives inconsistent with the Delta Plan.

2 162. The DSC contends that the Delta Plan CSO Amendments do not further the WaterFix
3 Delta Tunnels and that the 2013 and 2018 PEIRs were adopted and certified in compliance with CEQA.

4 163. An actual controversy has arisen and now exists between the Petitioners and the DSC
5 regarding their respective rights and duties under the Delta Plan Amendments and CEQA.

6 164. The Petitioners desire a judicial determination and declaration of the parties' respective
7 rights and duties pursuant to Code of Civil Procedure section 1060, including a declaration of whether
8 the DSC failed to proceed in the manner required by CEQA when it adopted and certified the Delta
9 Plan Amendments and the 2013 and 2018 PEIRs, or in the alternative whether the Delta Plan
10 Amendments do not establish any support whatsoever for any future decision including but not limited
11 to the BDCP/WaterFix process to favor selection of an alternative of development of new conveyance
12 and diversions from the North Delta as opposed to other alternatives such as reducing exports and
13 maintaining the existing through-Delta conveyance. Such a declaration is necessary and appropriate at
14 this time.

15 **IX. FOURTH CAUSE OF ACTION**

16 **(Common Law Public Trust Doctrine)**

17
18 165. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully
19 set forth herein.

20 166. The State of California, as a sovereign entity, owns "all of its navigable waterways and
21 the lands lying beneath them 'as trustee of a public trust for the benefit of the people.'" (*Colberg, Inc.*
22 *v. State of California ex rel. Dept. Pub. Wks.* (1967) 67 Cal.2d 408.) The State acquired title as trustee
23 to such lands and waterways upon its admission to the union. (*City of Berkeley v. Superior Court*
24 (1980) 26 Cal.3d 515, 521.)

25 167. The public trust doctrine, as recognized and developed in California decisions,
26 encompasses all navigable lakes and streams, and protects navigable waters from harm caused by
27 diversion of non-navigable tributaries. The Delta Plan Amendments apply to and directly affect
28 navigable waters.

1 168. The public trust is an affirmation of the duty of the state to protect the people's common
2 interest in California's streams, lakes, marshlands and tidelands. The State therefore, has "an
3 affirmative duty to take the public trust into account in the planning and allocation of water resources,
4 and to protect public trust whenever feasible." (*National Audubon Society v. Superior Court of Alpine*
5 *County*, (1983) 33 Cal.3d 419.)

6 169. In pursuing the coequal goals set out in the 2009 Delta Reform Act, the Legislature
7 acknowledged the public trust's application to DSC's Delta Plan by declaring, "[t]he longstanding
8 constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state
9 water management and are particularly important and applicable to the Delta." (Water Code § 85023).

10 170. The people's interest under the public trust include the right to fish, hunt, bathe, swim,
11 to use for boating and general recreation purposes the navigable waters of the state. There is also a
12 "growing public recognition" that one of the most important public uses of public trust lands is the
13 "preservation of those lands in their natural state, so that they may serve as ecological units for
14 scientific study, as open space, and as environments which provide food and habitat for birds and
15 marine life, and which favorably affect the scenery and climate of the area." (*National Audubon Society*
16 *v. Superior Court of Alpine County*, (1983) 33 Cal.3d 419, 434-35.)

17 171. As a part of the public trust analysis under the Delta Reform Act, a flow criterion that
18 quantifies the volume, quality, and timing of water necessary for the Delta ecosystem to thrive must be
19 submitted to the DSC in order to inform its public trust analysis. The Delta Plan Amendments do not
20 contain any water availability analysis that would show, at a minimum, what water will be available to
21 meet the Delta Reform Act's goals. Additionally, the DSC acted prematurely by adopting the Delta
22 Plan CSO Amendments and certifying the 2018 PEIR before the SWRCB updates the Bay-Delta Plan
23 and develops flow and water quality objectives to address all beneficial uses including public trust
24 resources in the Delta and upstream tributaries.

25 172. The DSC rejected comments from groups to develop a public trust analysis to satisfy
26 the California Supreme Court's holding that the state must protect the public trust in water supply
27 planning decisions. Both the Delta Plan Amendments and the 2018 PEIR fail to do so.

28 173. Petitioners are informed and believe, and thereupon allege, that the DSC's failure to

1 consider and analyze the public trust in creating and approving Delta Amendments and accompanying
2 PEIR will harm trust resources and the petitioners' and the people's rights and interests in those
3 resources, including fishing, hunting, bathing, swimming, boating, and preserving navigable waters of
4 the state, and thus violates the public trust.

5 174. Petitioners are informed and believe, and thereupon allege, that by failing to consider
6 and analyze the public trust, the DSC violated the state's duty to protect public trust resources.

7 175. As a state trustee agency of the Public Trust, the DSC must also certify that covered
8 actions are consistent with the public trust doctrine and the adequate protection of trust resources; the
9 Delta Reform Act itself repeats the need. Despite containing a complex system to determine
10 consistency of covered actions with the Plan, the Plan and its implementing Regulations lack any
11 provision to determine consistency of covered actions with the public trust doctrine. Failure to include
12 such a provision is a violation of the DSC public trust obligations, violates the doctrine, and is arbitrary,
13 capricious and not in accordance with law.

14 **FIFTH CAUSE OF ACTION**

15 **(Human Right to Water—Cal. Water Code § 106.3)**

16 176. Petitioners hereby incorporate all of the allegations in the paragraphs above as if fully
17 set forth herein.

18 177. In 2012, the California Legislature enacted section 106.3 of the California Water
19 Code. Pursuant to Water Code section 106.3(a), "It is hereby declared to be the established policy of
20 the state that every human being has the right to safe, clean, affordable, and accessible water adequate
21 for human consumption, cooking, and sanitary purposes." Pursuant to Water Code section 106.3(b),
22 "All relevant state agencies, including the department, the state board, and the State Department of
23 Public Health, shall consider this state policy when revising, adopting, or establishing policies,
24 regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of
25 water described in this section."

26 178. The DSC is a state agency subject to the requirements and mandatory duties created
27 by Water Code section 106.3.

28 179. The Delta Plan Amendments are pertinent to the uses of water for human

1 consumption, cooking, and sanitary purposes. The DSC's failure to consider the human right to water
2 in creating and adopting the Delta Plan Amendments impairs the right of urban and rural Delta
3 residents to safe, clean, affordable, and accessible water adequate for human consumption and other
4 human uses.

5 180. The Delta Plan Amendments on conveyance, storage, and operations of both, and on
6 performance measures are invalid because the DSC violated Water Code section 106.3. The DSC
7 failed to consider the policy of the state that Delta residents have the right to safe, clean, affordable,
8 and accessible water adequate for human consumption, cooking, and sanitary purposes, when it
9 adopted the Delta Plan Amendments.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioners pray for relief as follows:

13 1. For alternative and peremptory writs of mandate, commanding the DSC to:

14 a. vacate and set aside approval of the Delta Plan Amendments and findings
15 supporting the approval;

16 b. vacate and set aside certification of the 2013 PEIR;

17 c. vacate and set aside certification of the 2018 PEIR;

18 d. suspend any and all activity pursuant to the DSC's approval of the Delta Plan
19 Amendments that could result in an adverse change or alteration to the physical environment until the
20 writ is discharged and DSC has complied with all requirements of CEQA and all other applicable state
21 and local laws, policies, ordinances, and regulations as are directed by this Court pursuant to Public
22 Resources Code section 21168.9.

23 2. For a stay, temporary restraining order, preliminary injunction, and permanent
24 injunction prohibiting any actions by the DSC pursuant to its approval of the Delta Plan Amendments
25 and certifications of the 2013 and 2018 PEIRs until the writ is discharged and DSC has fully complied
26 with all requirements of CEQA and all other applicable state laws, policies, and regulations;

27 3. For a stay, temporary restraining order, preliminary injunction, and permanent
28 injunction prohibiting any actions by the DSC pursuant to its approval of the Delta Plan Amendments

1 and certifications of the 2013 and 2018 PEIRs until the DSC has fully complied with all requirements
2 of Water Code section 106.3;

3 4. For a declaration that the Delta Plan Amendments are inconsistent with CEQA and the
4 Government Code;


5 5. For costs of the suit;

6 6. For attorney's fees pursuant to the Code of Civil Procedure section 1021.5; and

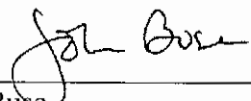
7 7. For such other and further relief as the Court deems just and proper.
8

9 DATED: May 25, 2018

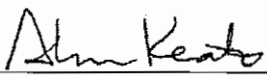
E. Robert Wright
FRIENDS OF THE RIVER

10
11 By: 
12 E. Robert Wright
13 Attorney for Petitioners/Plaintiffs Friends of the River,
14 Sierra Club California, Restore the Delta, and Planning
15 and Conservation League

16 John Buse
17 Aruna Prabhala
18 CENTER FOR BIOLOGICAL DIVERSITY

19 By: 
20 John Buse
21 Attorney for Petitioner/Plaintiff Center for Biological
22 Diversity

23 Adam Keats
24 CENTER FOR FOOD SAFETY

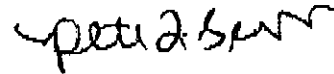
25 By: 
26 Adam Keats
27 Attorney for Petitioner/Plaintiff
28 Center for Food Safety

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VERIFICATION

I, Peter Galvin, declare that I am the Director of Programs of the Center for Biological Diversity, one of the Petitioner in this action, and authorized to make this verification. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know the contents thereof, and the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of May 2018, in Shelter Cove, California.



Peter Galvin